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**A SOUTH CHINA SEA ADIZ—VIETNAM'S NEXT
CHALLENGE**

by

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A SOUTH CHINA SEA ADIZ—VIETNAM’S NEXT CHALLENGE

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ABSTRACT

When China declared its East China Sea (ECS) Air Defense Identification Zone (ADIZ) in November 2013, the declaration sparked fears that it would soon implement similar zones over the South China Sea (SCS), further exacerbating tensions in the region. Since Vietnam is projected to be the country most affected by China's SCS ADIZ, this thesis focuses on how Vietnam's leaders might respond. To do so, this thesis reviews reactions from Japan, South Korea, and Taiwan during the 2013 ECS ADIZ crisis to identify a range of possible responses for Vietnam. It then explores how Vietnam has responded to past territorial disputes from China—both land and maritime—to identify similar challenges that an ADIZ might pose. Finally, it analyzes the range of responses within the context of Vietnam's current strategies toward China. Research reveals that Vietnam has four major policy options: bilateral diplomacy, multilateralization/arbitration, complete defiance, and a mixture of civilian appeasement and military nonrecognition. The policy option Vietnam chooses will depend largely on its leadership preferences as well as domestic and geopolitical factors.

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LIST OF ACRONYMS AND ABBREVIATIONS

ADIZ	Air Defense Identification Zone
ADMM-Plus	ASEAN Defence Ministers Meeting-Plus
ASEAN	Association of Southeast Asian Nations
CAA	Civil Aeronautics Administration
CRS	Congressional Research Service
DoC	Declaration on Conduct of Parties in the South China Sea
DOD	U.S. Department of Defense
ECS	East China Sea
EEZ	economic exclusive zone
FAA	Federal Aviation Administration
FIR	flight information region
ICAO	International Civil Aviation Organization
JASDF	Japanese Air Self-Defense Force
MND	Ministry of National Defense
MOFA	Ministry of Foreign Affairs (Japan)
PLA	People's Liberation Army
PLAN	People's Liberation Army-Navy
PRC	People's Republic of China
ROC	Republic of China (Taiwan)
ROK	Republic of Korea (South Korea)
SCS	South China Sea
UNCLOS	United Nations Convention on the Law of the Sea
VCP	Vietnamese Communist Party
VPA	Vietnam People's Army

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I. INTRODUCTION

A. BACKGROUND AND MAJOR RESEARCH QUESTION

In November 2013, China unilaterally—and without advanced warning—declared an Air Defense Identification Zone (ADIZ) in the East China Sea (ECS). The move not only drew strong criticism from Japan, South Korea, and Taiwan, it also prompted fears among Southeast Asian countries that a similar pronouncement would soon be declared over the already contentious South China Sea (SCS), further complicating disputes in the region. As China strengthens and consolidates its military air capabilities, scholars and policymakers outside China continue to debate whether China will declare an ADIZ in the South China Sea and how Southeast Asian countries would respond if it did. Vietnam is the country that would be affected most by a SCS ADIZ; therefore, this thesis seeks to answer this question: how would Vietnam respond to a People's Republic of China's (PRC) declaration of an ADIZ over the South China Sea?

B. IMPORTANCE OF THE RESEARCH QUESTION

The significance of the question boils down to two main points. First, the declaration of the ECS ADIZ has contributed to the escalation of existing conflicts in Northeast Asia; hence, we can expect a similar declaration in the SCS to exacerbate existing conflicts in Southeast Asia. Second, China's challenges to Vietnam's maritime territorial claims have prompted a sharpening of Vietnam's responses in recent years, and the declaration of a Chinese ADIZ in the SCS is likely to worsen tensions between both countries and possibly lead to armed conflict.

1. Escalation of Tensions

The ECS ADIZ has already increased tensions in Northeast Asia. Chinese and Japanese military aircraft intercepts have swelled over the past several years. From March to December 2014, Japanese Air Self-Defense Force (JASDF) F-15s launched “379 times

to intercept foreign aircraft—a sixfold increase over the same [period] in 2010.”¹ While the majority of these intercepts ended in professional encounters, the April 2001 collision between the U.S. Navy EP-3 and the People’s Liberation Army-Navy (PLAN) J-8 fighter highlights the dangerous nature of these aerial rendezvous. More recently, the November 2015 downing of a Russian SU-24 by Turkish F-16s is a reminder of the deadly consequences of adversarial military-to-military aerial encounters. Worst still, the frequency of these intercepts in the ECS is likely to increase as the People’s Liberation Army (PLA) steps up its military exercises in its quest to construct and employ a capable blue-water navy. As a result of these efforts, PLA naval and air forces will likely need to push both operational and territorial limits, coming into increasing contact with the JASDF. To counter this new reality and maintain the status quo, the JASDF has had to increase its military presence. Already plans are under way to stand up an additional F-15 squadron in Naha to handle that eventuality.² As escalation occurs, the risk of a midair incident similar to the EP-3 accident becomes more pronounced.

Much of that risk can be attributed to confusion stemming from China’s ECS ADIZ procedural requirement that all foreign aircraft—regardless of whether they are military or civilian—must submit advance flight plans to Chinese aviation authorities. Both Japan and the United States have argued that this requirement is contrary to common international practice, which limits the reporting requirement to aircraft that intend to overfly another country’s territorial airspace and not those that will simply transit through that country’s ADIZ. Consequently, this requirement has led to an international debate surrounding China’s intent for establishing the ECS ADIZ, centering on whether it was truly a defensive measure or an offensive plan to strengthen territorial control over the ECS and other regions where it has similar claims.

If China’s intent is to strengthen its claims in the ECS, then it follows that China could use the ADIZ as another tool to bolster its claims in the SCS. Such a move would further stoke tensions with Vietnam, which has its own claims in the region. Already

¹ Martin Fackler, “In a Test of Wills, Japanese Fighter Pilots Confront Chinese,” *New York Times*, March 8, 2015, http://www.nytimes.com/2015/03/09/world/in-a-test-of-wills-japanese-fighter-pilots-confront-chinese.html?_r=0.

² Ibid.

overlapping territorial claims in the South China Sea between China, Vietnam, the Philippines, Indonesia, Malaysia, Brunei, and Taiwan have spilled over onto issues such as fishing rights, oil exploration, and land reclamation. Indeed, the China's annual unilaterally imposed fishing ban continues to be a source of friction between Vietnam and China. While Vietnamese fishermen have largely ignored the ban since 2001 due to China's limited abilities to enforce the measures, China has intensified its maritime enforcement capabilities in recent years. Since 2009, China has impounded numerous Vietnamese fishing ships and detained hundreds of crewmembers—prompting numerous diplomatic protests from Vietnam.³ Additionally, the May 2014 deployment of a Chinese exploratory oil rig, HD-981, into Vietnam's exclusive economic zone (EEZ) further complicated the disputes, inflaming widespread anti-China protests throughout Vietnam and causing economic losses in the millions.⁴ Five Chinese citizens were killed and numerous foreign factories were destroyed, forcing China to evacuate many of its citizens from Vietnam and withdraw the rig in July—one month earlier than it had publicly announced.⁵

2. Vietnam's Sharpening Responses

While these incidents themselves are not new, what is significant is the sharpening of Vietnam's responses in recent years to China's territorial claims. During the HD-981 incident, Prime Minister Nguyen Tan Dung of Vietnam accused China of a “dangerous and serious violation” after China acknowledged that its vessels had blasted Vietnamese ships with water cannons.⁶ This tone stands in sharp contrast to the policy of deference adopted by Vietnam's leadership in the decade prior.⁷ Moreover, Vietnam has

³ Carlyle A. Thayer, “The Tyranny of Geography: Vietnamese Strategies to Constrain China in the South China Sea,” *Contemporary Southeast Asia* 33, no. 3 (December 2011): 357.

⁴ Jenny W. Hsu and Cris Larano, “Vietnam Lashes Out at China, Tries to Coax Firms to Stay,” *Wall Street Journal*, May 21, 2014, <http://www.wsj.com/articles/SB10001424052702303480304579575934244928384>.

⁵ Robert Sutter and Chin-hao Huang, “China-Southeast Asia Relations: China Advances, More Opposition in South China Sea,” *Comparative Connections* 16, no. 2 (September 2014): 59, http://csis.org/files/publication/1402qchina_seasia.pdf.

⁶ *Ibid.*, 60.

⁷ Alexander L. Vuving, “Strategy and Evolution of Vietnam's China Policy: A Changing Mixture of Pathways,” *Asian Survey* 46, no. 6 (2006), 820–21, doi: 10.1525/as.2006.46.6.805.

embarked on both self-help and balancing policies in recent history by modernizing its military and seeking regional allies, bolstering the likelihood of military confrontation. Consequently, examining Vietnam's policy options should China declare an SCS ADIZ is important.

C. POTENTIAL EXPLANATIONS AND HYPOTHESES

If China imposes an ADIZ in the South China Sea, the response from Vietnam will depend on the leadership's preferences and its policymaking process. If Vietnamese Communist Party (VCP) conservatives are dominant, Vietnam would be more likely to engage in bilateral multilevel talks, which have been historically successful at resolving long-standing disputes and diffusing tensions. The conservatives would prefer a policy of deference rather than risk escalating tensions. In this case, Vietnam's civilian and military flights would probably comply with the Chinese ADIZ procedures. Still, such a policy would be politically risky given Vietnam's current domestic sentiments toward China. As highlighted during the May 2014 HD-981 crisis, public protests can inflame latent anti-Chinese sentiments and sour Sino-Vietnamese relations. Additionally, total relinquishment of airspace control would translate to Vietnam's implicitly giving up its maritime claims in its EEZs—making this policy option less than optimal.

On the other hand, if modernizers are dominant, Vietnam would be more inclined to multilateralize the issue and adopt a policy similar to Japan's response. After initially condemning China's actions, VCP leadership could instruct both its military and commercial aircraft transiting the new ADIZ to not comply with the Chinese instructions to submit advance flight plans. The VCP could later join with Japan in seeking legal recourse through the International Civil Aviation Organization (ICAO) in determining if the zone threatens the order and safety of international aviation. The Vietnamese military would likely increase surveillance flights in the area to undermine any new rules from the China's SCS ADIZ. This policy path, however, risks provoking China and straining Sino-Vietnamese relations, something the VCP hopes to avoid given China's greater power parity over Vietnam.

A third option is more likely to be chosen if internal disagreements over the direction of Vietnam's policy toward China continue. In this case, neither conservative nor modernizer ideology is dominant. Consequently, Vietnam's reaction will be driven by competing/contradictory forces, which will include elements of bilateral diplomacy as well as efforts to multilateralize. Quiet party-to-party negotiations may be successful at delinking the ADIZ issue from the larger SCS maritime disputes. As a compromise between the two factions, a possible response might include partial civilian appeasement with nonmilitary compliance. Vietnam's commercial carriers would be instructed to comply in the interest of aviation safety while military/state aircraft would be ordered to reject the ADIZ rules outright. This policy allows Vietnam to explain its deference toward China, while appearing to take a strong position of defiance.

A fourth, more assertive option involves Vietnam's expanding its own ADIZ, similar to South Korea's actions, as a signal to China that Vietnam is unwilling to acquiesce. In this scenario, Vietnam would be required to exercise its newly acquired self-help capabilities, especially its aerial assets, to undermine a Chinese SCS ADIZ and enforce its expanded zone. It would need to increase military flight patrols and intercept PLA aircraft that may overfly this new zone. This option would be considered if Vietnam feels that it cannot adequately resolve the dispute through other means and that it will lose significant legitimacy if this issue is not properly addressed.

D. RESEARCH DESIGN

To answer how Vietnam would likely respond to PRC declaration of a SCS ADIZ, I survey several comparative cases to establish an empirical foundation on which to base predictions about Vietnam's likely response to the declaration. First, by examining the East Asian countries' reactions to the ECS ADIZ declaration, I explore how and why these countries chose their particular responses. This examination enables me to flesh out the range of policy options for Vietnam. Next I examine how Vietnam has responded to past territorial disputes—both land and maritime—to identify challenges that are sufficiently similar to those an ADIZ might pose, describe the options Vietnam

faced, and explain why Vietnam responded the way it did to each challenge. Finally, I analyze the best policy option based on current Vietnam's China foreign policy.

Sources are drawn mostly from published academic research and foreign policy news journals. With regard to the more recent ECS ADIZ, the Congressional Research Service (CRS) and International Crisis Group (ICG) have compiled some of the most comprehensive studies. Lacking from their reports, however, are Southeast Asian countries' perspectives. Online foreign policy blogs and opinion pieces fill this gap. In the case of Vietnam's response to land border and maritime challenges, the literature is extensive and encompasses both Western and Vietnamese analyses.

E. THESIS OVERVIEW AND CHAPTER OUTLINE

The thesis comprises five chapters. Chapter II reviews the current literature. Chapter III traces the legal regime for ADIZs and explores key unresolved issues. Chapter IV is a case study of China's ECS ADIZ. It investigates how China's ADIZ has deviated from customary practices by introducing uncertainty and additional risk to the aviation community. This chapter also examines the responses from East Asian countries in order to identify and explore the range of policy options for Vietnam. Chapter V focuses on Vietnam's responses to territorial challenges from China with an emphasis on identifying challenges that are similar to those an ADIZ might pose. The chapter also describes the options Vietnam faced and explains why Vietnam responded the way it did to each challenge. Finally, the conclusion analyzes the range of options with Vietnam's existing policy pathways.

II. LITERATURE REVIEW

The current scholarship surrounding the South China Sea disputes is rather complex. This literature review, however, focuses on the following key relevant questions: (1) What is an ADIZ? (2) How is China's ECS ADIZ different from other ADIZs? (3) How have other East Asian countries responded to a Chinese ADIZ? and (4) How has Vietnam responded to other territorial disputes? The purpose of the first question is to familiarize the reader with the technical, historical, and legal aspects surrounding an ADIZ that make it distinctive from maritime and land boundaries. This distinction is critical to understanding the second question—what characteristics make the PRC's ADIZ so controversial? These two questions combine to highlight the challenges Vietnam would face if China declares an SCS ADIZ. After addressing that concern, we move on to reviewing cases from countries that have had to face a Chinese ADIZ challenge, more specifically those in the ECS. These cases are relevant because Vietnam has yet to be confronted by that sort of challenge, and there is little direct empirical evidence to draw historical comparisons. The value of this research is to extrapolate a spectrum of policy responses that Vietnam might be able to exercise. Finally, the last question traces how Vietnam has responded to similar past territorial challenges from China. This serves to explain how Vietnam is likely to respond to a challenge of a Chinese ADIZ in the SCS.

A. WHAT IS AN ADIZ?

ADIZs are technically and legally distinctive from maritime and land borders. The ICAO, the United Nations agency responsible for coordinating and regulating international civil aviation, defines ADIZs as “special designated airspace of defined dimensions within which aircraft are required to comply with special identification and/or reporting procedures additional to those related to the provision of air traffic services (ATS).”⁸ Its main purpose is to “properly identify all approaching aircraft for security

⁸ International Civil Aviation Organization, “Compliance Checklist (CC)/Electronic Filing of Differences (EFOD),” Annex 15, Amendment 37, 14th ed., July 2013, https://www.caa.govt.nz/ICAO/Annex_15_Amdt_37_EFOD.pdf.

purposes so that they could, prior to entry into national airspace, satisfy certain local entry requirements.”⁹ This increased transparency, in theory, would reduce the number of unnecessary military intercepts to visually identify potential aerial threats and improve overall state security. Usually established by coastal states, ADIZs include a large area of airspace that can extend hundreds of miles beyond the establishing nation’s territorial boundaries to provide ample time to respond to aerial threats.¹⁰ Fast-moving aircraft, which can reach speeds in excess of 500 knots, make these vast swaths of airspace necessary to increase states’ reaction time—generally measured in minutes rather than hours. According to Raul Pedrozo, an aviation legal scholar, ADIZs are analogous to the states’ maritime entry conditions for ships entering port or navigating internal waters.¹¹ The comparison, however, stops there. Unlike the maritime regime, aviation is significantly more time sensitive due to a multitude of technical factors (e.g., aircraft fuel status, speed, weather conditions, air traffic clearances). Furthermore, it is very difficult—if not nearly impossible—to detain or subdue an aircraft without physically compromising it.

Many states unilaterally establish and implement their ADIZ as part of their national early warning systems. The United States first introduced the concept in the 1950s as a response to Cold War tensions; it currently has an extensive system of ADIZs that includes the contiguous United States, Guam, Alaska, and Hawaii. As administrator of postwar Japan, the United States also helped establish and implement Japan’s first ADIZ in the late 1950s. Since management of airspace was transferred back to Japan in 1961, Japan’s ADIZ has undergone several expansions.¹² To date, about 20 other nations

⁹ Ruwantissa Abeyratne, “In Search of Theoretical Justification for Air Defence Identification Zones,” *Journal of Transportation Security* 5, no. 1 (2012): 88, doi: 10.1007/s12198-011-0083-2.

¹⁰ Ian E. Rinehart and Bart Elias, *China’s Air Defense Identification Zone (ADIZ)* (CRS Report No. R43894) (Washington, DC: Congressional Research Service, 2015), 2, <https://www.fas.org/sgp/crs/row/R43894.pdf>.

¹¹ Raul Pedrozo, “The Bull in the China Shop: Raising Tensions in the Asia-Pacific Region,” *International Law Studies* 90 (2014): 72, <https://www.usnwc.edu/getattachment/a79b504a-46bf-45be-a587-9ed51592a289/The-Bull-in-the-China-Shop--Raising-Tensions-in-th.aspx>.

¹² Kimberly Hsu, “Air Defense Identification Zone Intended to Provide China Greater Flexibility to Enforce East China Sea Claims,” *U.S.-China Economic and Security Review Commission Staff Report*, 2014, 3. Note: The first expansion occurred in 1972, the second occurred in 2010 to cover Yonaguni Island.

have established ADIZs over their coastal airspace, including South Korea, Malaysia, Vietnam, Burma, Oman, and India.¹³

This prevalence aside, much of the current legal regime on international aviation has been rather ambiguous in addressing ADIZs. Based heavily on the 1944 Chicago Convention on International Civil Aviation (Chicago Convention) and the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the legal regime does not specifically address the legal basis for which states may establish ADIZs, nor are there any rules for aircraft operating in such zones. According to Ruwantissa Abeyratne, former senior legal officer for ICAO, “There is no overwhelming evidence, either from a scholastic or legislative perspective that lends legal legitimacy to the establishment of ADIZs.”¹⁴ Nevertheless, a state’s right to establish an ADIZ is generally accepted under the principle of self-defense and customary law.¹⁵ According to aviation legal scholars, its justification falls under the right of states to establish “reasonable conditions of entry into their land territory.”¹⁶ This right does not fall under any international agreement, but customary state practices.

Despite this ambiguity, some countries avoid establishing ADIZs over contested territories, or, when issues arise, they seek agreeable settlements.¹⁷ This has not been an issue for the United States with its large network of ADIZs, due in part to its friendly neighbors. The United States does, nonetheless, coordinate and share responsibility with Canada for monitoring and enforcing portions of the Canadian ADIZ that border the United States. When the possibility of overlap arises, some countries coordinate agreeable settlements or avoid contested airspace altogether. For example, the JASDF and the South Korean military frequently share flight plans of military aircraft that

¹³ Pai Zheng, “Justifications and Limits of ADIZs under Public International Law.” *Issues in Aviation Law and Policy* 14, no. 2 (2015): 185.

¹⁴ Abeyratne, “Search of Theoretical Justification,” 88.

¹⁵ Christopher M. Petras, “The Law of Air Mobility—The International Legal Principles behind the U.S. Mobility Air Forces’ Mission,” *Air Force Law Review* 66 (2010), 63.

¹⁶ Pedrozo, “Bull in the China Shop,” 72.

¹⁷ *Ibid.*, 74.

operate over disputed territory.¹⁸ Additionally, Japan has restrained itself from provoking Russia by not extending an ADIZ over the airspace of the disputed Kuril Islands.¹⁹ While the evidence of the cooperation between the United States and Canada points to coordination among allies, it is uncertain if rivals go through the same coordination effort. Still, Japan's restraint over the Kuril Islands suggests that states are cognizant of the potential for conflict if they implement ADIZs over disputed territories.

Another aspect of interest is states' guidance regarding aircraft operating within foreign ADIZs. Literature on states' guidance for aircraft usually draws two key distinctions: (1) civilian vs. state aircraft and (2) aircraft that simply transit an ADIZ vs. aircraft that intend to enter the airspace above another country's land or territorial waters. For example, U.S. Federal Aviation Administration (FAA) regulations require civilian airlines to file flight plans and identify themselves regardless of whether they intend to enter or remain outside territorial airspace.²⁰ Additionally, U.S. Department of Defense (DOD) policy makes a distinction between aircraft not intending to enter territorial airspace and those that penetrate national airspace. According to the U.S. Navy's *Commander's Handbook on the Law of Naval Operations*, "U.S. military aircraft not intending to enter national airspace should not identify themselves or otherwise comply with ADIZ procedures established by other nations, unless the United States specifically agreed to do so."²¹ Other countries have differences in guidance as well. Figure 1 compares the variations between countries' ADIZ rules.

¹⁸ Rinehart and Elias, "China's Air Defense Identification Zone," 37.

¹⁹ Pedrozo, "Bull in the China Shop," 74.

²⁰ ADIZ Flight Plan Requirements, 14 C.F.R. § 99.11a (2004).

²¹ Department of the Navy, Office of the Chief of Naval Operations and Headquarters, United States Marine Corps, Department of Homeland Security, and United States Coast Guard, *The Commander's Handbook on the Law of Naval Operations* (Newport, RI: Naval War College, 2007), 2–13.

Figure 1. Comparison of ADIZ Features

	Civilian aircraft required to file flight plan or identify?	Military aircraft required to file flight plan or identify?	State aircraft that transit ADIZ without entering sovereign airspace required to file flight plan?	ADIZ covers territory administered by other country?
United States	Yes	No	No	No
China (PRC)	Yes	Yes	Yes	Yes
Japan	No	No	No	No
South Korea	Yes	Yes	Yes	No
Taiwan (ROC) ^a	Yes	Unclear	Unclear	Yes

Source: 14 C.F.R. 99; PRC Ministry of National Defense announcement; CRS correspondence with Japanese and South Korean officials; ROC Aeronautical Information Publication.

- a. The ROC has asserted that its official ADIZ covers parts of territory administered by the PRC (on the Chinese mainland) and by Japan (by one degree of longitude over Japan's Yonaguni Island).

Source: Ian E. Rinehart and Bart Elias, *China's Air Defense Identification Zone (ADIZ)* (CRS Report No. R43894) (Washington, DC: Congressional Research Service, 2015), 4, <https://www.fas.org/sgp/crs/row/R43894.pdf>.

B. HOW IS CHINA'S ECS ADIZ DIFFERENT?

Why has there been an international outcry over China's ECS ADIZ? International law does not prohibit countries from establishing their own ADIZ in the interest of national security.²² The first major point of friction involves how China established the zone. Most states work with bordering countries to coordinate and administer potential overlapping aviation zones. In contrast, China did not consult with its East Asian neighbors prior to declaring its ADIZ, which overlapped with preexisting Japanese, South Korean, and Taiwanese ADIZs. After the ECS declaration, China's ECS ADIZ generated a large area of overlap with other East Asian ADIZs. The size of this overlap, as well as the fact it encompassed the disputed Senkaku/Diaoyu Islands, sparked speculations that China was using the ADIZ as a tool for territorial consolidation, not for defensive security.

Literature from Western and Chinese scholars also points to a second major area of contention involving how the new ADIZ procedures would be applied. Western observers criticized China for applying the rules to all aircraft—both civilian and state.²³

²² Pedrozo, "Bull in the China Shop," 72.

²³ Ibid., 68; Lowell Bautista and Julio Amador III, "Complicating the Complex: China's ADIZ," *PacNet* 87A (December 2013): 1.

Moreover, they accused China of failing to differentiate between aircraft flying parallel with China's coastlines through the ADIZ and those intending to penetrate the PRC's territorial airspace.²⁴ Western scholars contended that China was exacerbating tensions in the region by requiring all aircraft to provide flight plans and radio, transponder, and logo identifications or face threats of "defensive emergency measures," which were not well defined. In contrast, Chinese scholars have defended the scope of the ECS ADIZ procedures. They argue that the requirement for advance flight plans was not dissimilar from other countries' ADIZs. Michael Swaine, a China policy analyst, notes that the published procedures of the Philippines, Myanmar, Taiwan, and Australia require filing advance flight plans but have no specific references to the aircraft's final destination.²⁵ Furthermore, according to Taiwan's Civil Aeronautics Administration (CAA), Japan requires Taiwanese airlines to submit flight plans when traversing Japan's ADIZ.²⁶ Within this context, China's rules do not violate international law, and the criticism China faced has little merit.

C. HOW HAVE EAST ASIAN COUNTRIES AND VIETNAM REACTED TO THE CHINESE ECS ADIZ?

Vietnam has yet to face an explicit Chinese ADIZ challenge in the SCS. Hence reviewing cases from East Asian countries that have had to confront a similar Chinese ADIZ challenge is necessary to explore the range of policy options. Furthermore, Vietnam has had to operate its civilian aircraft within China's ECS ADIZ, and examining Vietnam's responses during the original implementation can help identify likely policy preferences.

²⁴ International Crisis Group, "Old Scores and New Grudges: Evolving Sino-Japanese Tensions," *Asia Report* 258 (July 2014): 10.

²⁵ Michael D. Swaine, "Chinese Views and Commentary on the East China Sea Air Defense Identification Zone (ECS ADIZ)," *China Leadership Monitor*, no. 43 (spring 2014): 5. http://carnegieendowment.org/files/CLM43MS_Final_022514.pdf.

²⁶ *Ibid.*

1. Japan

When China declared its ECS ADIZ, Japanese leaders were understandably highly critical and confrontational due to two controversial aspects. First, the new ADIZ overlaps with existing zones that Japan and the Republic of Korea (ROK) had established years before.²⁷ Second, part of the new ADIZ covers the airspace over Diaoyu/Senkaku Islands, which Japan currently occupies and administers. Japanese officials saw the move as an attempt to “pressure Japan to concede on the islands.”²⁸ When reports surfaced that Japanese commercial airliners were initially obeying China’s identification rules, the government ordered its domestic carriers to ignore the new Chinese procedures for flights that did not enter China’s territorial airspace. Since then, Japan has pursued several courses of action. It has sought multilateral legal actions through an ICAO proposal to “examine whether China’s actions threaten the order and safety of international aviation.”²⁹ Additionally, the Japanese parliament has unilaterally approved a resolution declaring “the ECS ADIZ a violation of international law.”³⁰ Furthermore, Japan has also sought the backing of its principal ally, the United States, to condemn China’s ECS ADIZ.³¹

2. South Korea

Like Japan, South Korea did not react positively to China’s ECS ADIZ declaration, yet its response was more tempered than that of Japan. The ROK’s vice defense minister expressed “strong regret” regarding China’s ECS ADIZ announcement.³² In previously scheduled meetings between senior defense officials at the end of November 2013, South Korea quietly requested that China redraw its ADIZ so

²⁷ Pedrozo, “Bull in the China Shop,” 66.

²⁸ International Crisis Group, “Old Scores and New Grudges,” 10.

²⁹ Rinehart and Elias, *China’s Air Defense Identification Zone*, 18.

³⁰ Ibid.

³¹ Serafettin Yilmaz, “China’s ADIZ in the East China Sea,” *E-International Relations*, January 8, 2014, <http://www.e-ir.info/2014/01/08/chinas-adiz-in-the-east-china-sea/>.

³² Pedrozo, “Bull in the China Shop,” 70.

it would not overlap with its own.³³ The request was ultimately rejected. Having failed to convince China to redraw the zone, the ROK turned to another strategy. On December 8, 2013, in consultation with the United States, China, and Japan, the ROK expanded its own ADIZ 186 nautical miles to the south to match its preexisting flight information region (FIR).³⁴

3. Taiwan

Taiwan's official reaction to the ECS ADIZ was much more muted than that of Japan and South Korea.³⁵ Despite the government's expressing "high concerns," its CAA instructed domestic airliners to comply with the ADIZ rules and file the requested flight information in the interest of aviation safety.³⁶ President Ma Ying-jeou also publicly stated that the ADIZ "was not helpful to the development of cross-strait relations."³⁷

4. Vietnam

The ECS ADIZ declaration definitely surprised, if not alarmed, Hanoi. Vietnam's Ministry of Foreign Affairs tried to downplay the issue and urged restraint in the region.³⁸ The government instructed its commercial carriers to submit flight plans to Chinese authorities when transiting through the ECS ADIZ.³⁹ While Japan instructed its military aircraft to disregard the ECS ADIZ rules, it is unclear whether Vietnam's military aircraft followed in the same direction or complied with the new requirements. This factor might not be a cause for concern given that Vietnamese military aircraft tend

³³ Pedrozo, "Bull in the China Shop," 70.

³⁴ Ibid.

³⁵ Alexander C. Tan, "Tipping the Scale: PRC's Military Modernization and Cross-Taiwan Straits Relations," *Journal of Asian Security and International Affairs* 1, no. 2 (August 2014): 134, doi: 10.1177/2347797014536642.

³⁶ David G. Brown and Kevin Scott, "China-Taiwan Relations: Building Trust?" *Comparative Connections* 15, no. 3 (September–December 2013): 69.

³⁷ Ibid., 70.

³⁸ "VN keeps an Eye on East China Sea," *Việt Nam News*, December 6, 2013, <http://vietnamnews.vn/politics-laws/248560/vn-keeps-an-eye-on-east-china-sea.html>.

³⁹ "More Airlines Submit Flight Plans to China, While Japanese Carriers Hold Out," *Asahi Shimbun*, December 14, 2013, http://ajw.asahi.com/article/asia/around_asia/AJ201312140051.

to favor closer coastal waters and rarely venture into the ECS. Still, it would likely become another source of friction if and when China implements an SCS ADIZ.

D. HOW HAS VIETNAM REACTED TO PAST CHINESE TERRITORIAL CHALLENGES?

While the fear is that China could soon declare an ADIZ over the South China Sea, this new dimension is comparable to previous territorial challenges that Vietnam has encountered from China. By tracing how Vietnam has responded to similar past territorial challenges from China, we can predict how Vietnam is likely to react to the declaration of a Chinese ADIZ in the South China Sea.

To address territorial disputes, the literature on Vietnam's foreign policy suggests Vietnam uses three primary strategies: (1) engaging in party-to-party talks, (2) promoting multilateralism, and (3) increasing self-help capabilities/balancing.⁴⁰ First, bilateral party-to-party talks at the working group level, government level (deputy/vice-minister), foreign ministry level, and high level (presidents, prime ministers, and general secretary) have proven effective at resolving various long-standing land border and maritime disputes.⁴¹ For example, on December 30, 1999, Vietnam and China signed the Land Border Treaty, ending the border dispute originated after the brief Sino-Vietnamese War in 1979. In 2000, the two countries settled their Gulf of Tonkin disagreements through the Agreement on Demarcation of Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin.⁴² Overall, these bilateral agreements underscore that cooperation is possible when they are detached from other contentious issues.

Second, for much more complex and contentious issues related to the South China Sea, Vietnam has complemented its party-to-party talks with multilateralization through regional organizations and institutions. This strategy affords Vietnam the ability to reframe the issue and seek support from nations that share similar interests against a larger rival to achieve greater parity than if it were to go in alone. Thus, Vietnam sees the

⁴⁰ Thayer, "Tyranny of Geography," 352.

⁴¹ Ramses Amer, "China, Vietnam, and the South China Sea: Disputes and Dispute Management," *Ocean Development & International Law* 45, no. 1 (2014): 18, doi: 10.1080/00908320.2013.839160.

⁴² Ibid.

Association of Southeast Asian Nations (ASEAN) and other regional institutions as central to advancing this multilateralization strategy. According to Carlyle Thayer, a Vietnam observer, “Vietnam’s [strategy] is to promote multilateral efforts to enmesh China in a web of cooperative relations.”⁴³ For instance, Vietnam used its position as ASEAN chair in 2010 to multilateralize the South China Sea disputes and to gain the support of regional partners.⁴⁴ Still, not all ASEAN countries share Vietnam’s strong position against China. Malaysia tempers its official language regarding the South China Sea disputes despite demands from the Philippines and Vietnam to take a tougher stance.

Vietnam’s third strategy to counter China is to grow its self-help capabilities. The Vietnam People’s Army (VPA) has been engaged in a modernization effort to professionalize its forces and acquire updated military hardware.⁴⁵ Recently the VPA took delivery of its fifth Kilo-class diesel submarine, several Gepard-class frigates, and numerous SU-30 fighter aircraft from Russia.⁴⁶ An unexpected regional partner, Japan, has also offered to help. In August 2015, as part of an aid package from Japan, Vietnam’s Fisheries Resources Surveillance Department received its first of three maritime surveillance ships to patrol the South China Sea.⁴⁷

All three strategies, however, depend on Vietnamese political leadership. Throughout the last decade, scholars of Vietnamese domestic politics have offered several labels for the broad power blocs. These include the following: anti-imperialists, integrationists, conservatives, modernizers, and moderates.⁴⁸ Currently the most commonly used terms to represent the three dominant blocs are conservatives,

⁴³ Thayer, “Tyranny of Geography,” 352.

⁴⁴ Ibid., 363.

⁴⁵ Carlyle A. Thayer, “The Political Role of the Vietnam People’s Army: Corporate Interests and Military Professionalism,” paper presented at the Annual Meeting of the Field Association of Asian Studies, Toronto, March 2012, 12.

⁴⁶ “Vietnam’s Russian Restocking: Subs, Ships, Sukhois, and More,” *Defense Industry Daily*, last updated December 11, 2014, <http://www.defenseindustrydaily.com/vietnam-reportedly-set-to-buy-russian-kilo-class-subs-05396/>.

⁴⁷ “Vietnam Receives First Japanese Ship for Fishery Surveillance,” *Tuoi Tre News*, August 8, 2015, <http://tuoitrenews.vn/society/29676/vietnam-receives-first-japanese-ship-for-fishery-surveillance>.

⁴⁸ Vuving, “Vietnam’s China Policy,” 821; Alexander L. Vuving, “Vietnam: A Tale of Four Players,” in *Southeast Asian Affairs 2010*, ed. Daljit Singh (Singapore: Institute of Southeast Asian Studies, 2010), 361.

modernizers, and moderates.⁴⁹ Despite the varying labels, what is important is each bloc's policy preference toward China. Conservatives prefer a strategy of solidarity with China while modernizers prefer internationalization and integration into the global community.⁵⁰ Moderates have no strong policy preferences and will side with conservatives or modernizers whenever their interests align.⁵¹

Vietnam's China policy is not driven by leadership preference alone but also by the VCP's primary interest—regime security. From its perspective, regime security equates to state security. Border disputes with China—if left unresolved—have the potential to morph into a security threat, which can negatively impact Vietnam's sovereignty and stability.⁵² Hence, the VCP has made a concerted effort to address those concerns over the last two decades.

In the last five years, Vietnam's top leadership has held differing views toward China. Before the January 2016 National Congress, the country's top three positions were occupied by General Secretary Nguyen Phu Trong, Prime Minister Nguyen Tan Dung, and President Truong Tan Sang. Often viewed as an ideological conservative and part of the old guard from northern Vietnam, Trong has been associated with being pro-China.⁵³ Conversely, the younger southerner Dung is regarded as a modernizer and reformist, favoring a stronger anti-China position.⁵⁴ As for Sang, it is unclear which policy direction he supports.

⁴⁹ Alexander L. Vuving, "Vietnam in 2012: A Rent-seeking State on the Verge of a Crisis." in *Southeast Asian Affairs 2013*, ed. Daljit Singh (Singapore: Institute of Southeast Asian Studies, 2013), 330–31.

⁵⁰ Vuving, "Vietnam's China Policy," 385.

⁵¹ Vuving, "Vietnam in 2012," 331.

⁵² Ramses Amer and Hong Thao Nguyen, "The Management of Vietnam's Border Disputes: What Impact on Its Sovereignty and Regional Integration," *Contemporary Southeast Asia* 27, no. 3 (December 2005): 439.

⁵³ Adam Fforde, "Post-Cold War Vietnam: Stay Low, Learn, Adapt and Try to Have Fun—But What about the Party?†," *Contemporary Politics* 19, no. 4 (2013): 392, doi: 10.1080/13569775.2013.835111; "Vietnam Profile: Leaders," *BBC Asia*, February 5, 2015, <http://www.bbc.com/news/world-asia-pacific-16567837>.

⁵⁴ Ibid.

After the recent January 2016 National Congress, Vietnam's vision toward China remains unclear. On the one hand, the reelection of Trong to the top leadership position suggests a conservative path toward China. On the other hand, domestic factors such as rising anti-China nationalism and a stagnant economy are pressuring the VCP to continue implementing reforms from modernizers.⁵⁵ This mixture of conservatives, modernizers, and moderates—especially at the top tier of leadership—makes it difficult to generalize Vietnam's policy direction toward China. Still, while it is not completely clear which vision the current leadership favors, any policy response will undoubtedly comprise a mixture of the three strategies above.

⁵⁵ "Vietnam Stays the Course in 2016," *Radio Free Asia*, January 27, 2016, <http://www.rfa.org/english/news/vietnam/vietnam-elections-2016-01272016141556.html>.

III. THE LEGAL REGIME OF ADIZS

Since the United States established the first ADIZ in the 1950s as a response to Cold War tensions, numerous coastal states have followed suit and implemented similar zones in adjacent waters in the interest of national security. With such expansion, questions and challenges have been made to the legality and validity of such zones in the context of international law. While few states challenge the legality of the establishment of ADIZs, the interpretation and scope of the rules in such zones are still debated considerably. As a result, key national security issues involving the sovereignty of airspace above EEZs and the treatment of state aircraft remain fundamentally unresolved. This chapter aims to define ADIZs, trace the origins and evolution of the international legal regime, and describe how that legal regime regarding ADIZs is largely ambiguous—leaving states to unilaterally define and implement their own ADIZs.

A. ADIZS AND THEIR PREVALENCE

Since the Korean War, coastal states have attempted to exert control over their adjacent airspace in the name of national security. These designated areas can extend hundreds of miles seaward and encompass significant sections of airspace in which all aircraft are required to identify, report, and follow certain rules specified by the governing state. An American aviation scholar further elaborates: “An ADIZ is generally setup to facilitate identification of approaching aircraft for national security purposes and . . . requires that aircraft entering territorial airspace from points outside satisfy certain identification requirements as a condition of entry. These may include mandates to filing a flight plan, two-way radio and transponders, and position reporting.”⁵⁶ Consequences for aircraft not adhering to ADIZ procedures may range from aerial interception by military aircraft to the more extreme aerial attack.⁵⁷ Accordingly, most operators consider these rules mandatory.

⁵⁶ Petras, “Law of Air Mobility,” 62.

⁵⁷ Zheng, “Justification and Limits of ADIZs,” 184.

ADIZs are not new, and many coastal nations have established them as part of their national security systems. The United States, in response to the threat from the Soviet Union, introduced the concept in 1950 to provide warning of a surprise attack. Since then, it has established five additional zones along the East Coast, West Coast, Alaska, Hawaii, and Guam. Canada instituted its own ADIZ in 1951, with the Philippines and France following suit in the mid to late 1950s. Later, in the 1960s, the Soviet Union created its own ADIZ after the downing of a U-2 spy plane over its territory. Today, about 20 nations have designated coastal ADIZs, including China, Japan, South Korea, Malaysia, Vietnam, Burma, Oman, and India.⁵⁸

Despite their prevalence, no international law expressly grants nations the authority to establish ADIZs. Saadat Bilal observes, “The authority to establish an ADIZ is not given by any international treaty nor prohibited by international law and is not regulated by any international body.”⁵⁹ Furthermore, scholars of aviation law have noted that the justification for ADIZs falls under the right of states to establish “reasonable conditions of entry into [their] national airspace.”⁶⁰

Prior to 2011, no protests have been documented against the establishment of ADIZs.⁶¹ Still, ADIZs are not without controversy. Coastal ADIZs often overlap maritime zones, and numerous challenges have been made regarding the legality and validity of these zones. Of particular security interest are the airspaces directly above land and territorial waters, high seas, and economic exclusive zones. Questions regarding the airspaces’ associated rules and their applicability to foreign—both civil and state—aircraft often arise. The following section explores how the relevant international legal regime treats coastal airspace and the larger implications on ADIZs.

⁵⁸ Zheng, “Justification and Limits of ADIZs,” 185.

⁵⁹ Saadat Hassan Bilal, “Chinese ADIZ in South China Sea: A Strategic Move,” *Defence Journal* 17, no. 7 (February 2014): 32.

⁶⁰ Michael N. Schmitt, “Air Law and Military Operations,” in *The Handbook of The International Law of Military Operations*, ed. Terry D. Gill and Dieter Fleck, 2nd ed. (Oxford: Oxford Univ. Press, 2010), 307.

⁶¹ Abeyratne, “Search of Theoretical Justification,” 94.

B. INTERNATIONAL LEGAL REGIME OF AIRSPACE AND AIRCRAFT

In general, ADIZs are not clearly defined in the current international legal regime. Apart from a generic definition of ADIZs provided in the literature review, a CRS report notes that “ICAO provides no specific standards or guidance with respect to the establishment of ADIZs, or air traffic rules or procedures for aircraft operating within designated ADIZs.”⁶² Consequently, this ambiguity in the international legal regime has prompted states to unilaterally establish their own rules and procedures.

Nevertheless, aspects of the legal basis for ADIZs can be traced to several international agreements that regulate airspace sovereignty and aircraft operations. These agreements include the 1919 Paris Convention for the Regulation of Aerial Navigation (Paris Convention); its replacement, the 1944 Chicago Convention on International Civil Aviation (Chicago Convention); and the 1982 UNCLOS.

1. Airspace above Land and Territorial Seas

One of the fundamental aspects of airspace sovereignty is the right of states to regulate the airspace directly above their territories and their superjacent territorial seas. The Paris Convention was the first multilateral attempt to codify this right. Michael Milde, a respected legal scholar who has helped draft ICAO regulations, notes that the 1919 Paris Convention ended almost two decades of academic discussions on the issue of airspace jurisdiction over land territory by declaring that “every state has complete and exclusive sovereignty over the airspace directly above its territory.”⁶³ The 1944 Chicago Convention later reaffirmed this right and expanded it to include the territorial waters. Articles 1 and 2 state

The contracting States recognize that every State has complete and exclusive Sovereignty over the air space above its territory. . . .For the purposes of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto.⁶⁴

⁶² Rinehart and Elias, *China’s Air Defense Identification Zone*, 6.

⁶³ Michael Milde, *International Air Law and ICAO*, 2nd ed. (N.p.: Eleven International Publishing, 2012), 10.

⁶⁴ Chicago Convention, Article 1, 2.

The language within Article 2, however, introduced a definitional problem regarding the specific meaning of “territorial waters.” UNCLOS resolved this issue in 1982 by defining the territorial seas as an area “not exceeding 12 nautical miles, measure[d] from baselines determined in accordance with this Convention.”⁶⁵ Furthermore, Article 2 of UNCLOS made it clear that the sovereignty of coastal states included the “airspace above the territorial sea.”⁶⁶ The legal regime is now clear—the airspace directly above a state’s land territory and its superjacent territorial sea belongs exclusively to the coastal state.

2. Airspace over the High Seas

ADIZs often extend over areas of airspace commonly known as “high seas” where much of transoceanic aviation occurs. Of particular security interest is the ability of coastal states to regulate such airspace, and UNCLOS and several international agreements provide relevant guidance. UNCLOS indirectly defines the high seas in Article 86 as “all parts of the sea that are not included in the exclusive economic zone, in the territorial waters of a state, or in the archipelagic waters of an archipelagic State.”⁶⁷ Going further, UNCLOS also limits states’ jurisdiction of the airspace over the high seas.⁶⁸ Additionally, it explicitly grants freedom of overflight to all aircraft above the high seas. Article 87 of UNCLOS specifically states

The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States . . . freedom of overflight.⁶⁹

This freedom had been codified in previous international agreements in the decades leading up to UNCLOS. In 1956, the International Law Commission formally recognized that the freedom to fly over the high seas was derived from the freedom of the

⁶⁵ UNCLOS, Article 3.

⁶⁶ *Ibid.*, Article 2.

⁶⁷ UNCLOS, Article 86.

⁶⁸ *Ibid.*, Article 89.

⁶⁹ *Ibid.*, Article 87.

high seas themselves.⁷⁰ Two years later, the Geneva Convention on the High Seas of 1958 also cited that “no State may validly purport to subject any part of them [the high seas] to its sovereignty.”⁷¹ These agreements make sovereignty of airspace over the high seas rather unambiguous—states have no legal jurisdiction over the airspace of the high seas.

Nevertheless, according to Milde, there cannot be a legal void over this airspace because such a vacuum would risk endangering the safety of aircraft sharing that airspace.⁷² Article 12 of the Chicago Convention states that “over the high seas, the rules in force shall be those established under this Convention.”⁷³ In this matter, the Chicago Convention asserted its right to regulate civil aircraft traffic via the ICAO Council, whose mission is to enhance aviation safety by developing international air navigation principles and procedures.⁷⁴ In short, civil aircraft operating over the high seas are subject to ICAO regulations.

3. Airspace over EEZs

While the issue of airspace sovereignty above territorial seas and the high seas is rather clear, the introduction of economic exclusive zones in 1982 started to generate debates surrounding states’ jurisdiction of airspace above EEZs. In the decades leading up to UNCLOS, a number of states attempted to exert control beyond the traditional territorial seas (previously three nautical miles) to protect fishing and other natural resources.⁷⁵ According to Milde, several states had unilaterally claimed rights to the territorial seas as far as 200 miles out; these rights were subsequently contested by other states on the basis of freedom of navigation and overflight.⁷⁶ As a compromise, UNCLOS established the concept of EEZs, which has a very specific legal regime. Milde

⁷⁰ Zheng, “Limits of ADIZs,” 188.

⁷¹ Ibid.

⁷² Milde, *International Air Law and ICAO*, 37.

⁷³ Chicago Convention, Article 12.

⁷⁴ Ibid., Article 12, 38.

⁷⁵ Milde, *International Air Law and ICAO*, 40.

⁷⁶ Ibid.

describes an EEZ as a “zone *sui generis* with special economic rights reserved for the coastal State. . . . [Its rights] relate only to the natural resources of the sea . . . and the coastal State cannot interfere with the traditional freedoms of the high seas, in particular the right of navigation and overflight.”⁷⁷ Nevertheless, a small number of states attempted to assert sovereignty over the airspace directly above the newly introduced EEZs. In one case in 1985, Brazil unsuccessfully petitioned the legal committee of ICAO to classify the airspace directly above its EEZ as territorial airspace.⁷⁸ The committee ultimately rejected this argument, citing that Brazil’s interpretation was “contradicting the relevant provisions [of UNCLOS].”⁷⁹ This unsuccessful challenge appeared to have mostly settled the issue of airspace sovereignty above EEZs. Still, as we will discuss later, some states have attempted to exert jurisdictional control the airspace above EEZs despite this ruling.

4. Civil versus State Aircraft

In addition to airspace, the legal regime also attempts to regulate aircraft that operate in the various regions of airspace. The current legal regime draws a distinction between civil and state aircraft. According to Milde, the vast majority of international air law focuses only on civil aircraft while specifically excluding the status and operation of ‘state aircraft.’⁸⁰ This disparity is reflected in the Chicago Convention and other lesser-known agreements. Article 3 of the Chicago Convention states

- a) This Convention shall be applicable only to civil aircraft, and shall not be applicable to State aircraft.
- b) Aircraft used in military, customs and police services shall be deemed State aircraft.
- c) No State aircraft of a contracting State shall fly over the territory of another State or land thereon without authorization by special agreement or otherwise, in accordance with the terms thereof.

⁷⁷ Ibid.

⁷⁸ Moritaka Hayashi, “Military and Intelligence Gathering Activities in the EEZ: Definition of Key Terms,” *Marine Policy* 29, no. 2 (2005): 127.

⁷⁹ Peter A. Dutton, “Caelum Liberum: Air Defense Identification Zones outside Sovereign Airspace,” *American Journal of International Law* 103, no. 4 (2009): 694.

⁸⁰ Milde, *International Air Law and ICAO*, 62.

- d) The contracting States undertake, when issuing regulations for their State aircraft, that they will have due regard for the safety of navigation of civil aircraft.⁸¹

This article essentially limits the Chicago Convention's scope of applicability to only civil aircraft. Other lesser-known international agreements continued this trend.⁸² They used the phrase, "this Convention shall not apply to the aircraft used in military, customs or police services" to specially exclude state aircraft.⁸³ As a result, state aircraft are largely exempt from international regulations.

The exclusion of state aircraft from international regulations, however, does not completely absolve individual states them of certain responsibilities and limits when it came to operations. For example, under Article 3d of the Chicago Convention cited above, states are directed to operate state aircraft with "due regard for the safety of navigation of civil aircraft."⁸⁴ Additionally, state aircraft are prohibited from "using weapons against civil aircraft in flight or endangering the lives and safety of persons onboard during interception."⁸⁵

The limited legal regime governing state aircraft, consequently, has left a legal deficiency for military aircraft in peacetime that has raised questions regarding the status of military aircraft. More specially, what constitutes a "military" aircraft? The Chicago Convention does not give any definitional clarity.⁸⁶ Aviation scholars have offered that certain characteristics of an aircraft such as the design, registration marks, ownership, and type of operation may be used in combination to classify military aircraft.⁸⁷ These characteristics, however, remain ill-defined as advances in technology outpace regulatory attempts. Milde highlights this legal void: "The status of military aircraft is not clearly

⁸¹ Chicago Convention, Article 3.

⁸² Note: These conventions includes the 1944 Geneva Convention on the International Recognition of Rights in Aircraft, the 1963 Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft, and the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft.

⁸³ Milde, *International Air Law and ICAO*, 67.

⁸⁴ Chicago Convention, Article 3d.

⁸⁵ Dutton, "Caelum Liberum" 693.

⁸⁶ Milde, *International Air Law and ICAO*, 72.

⁸⁷ Ibid.

determined by positive rules of international law and is not particularly transparent or unequivocal.”⁸⁸ Accordingly, the current legal regime does not sufficiently address military aircraft that operate over extraterritorial airspace.

In summary, the international aviation legal regime has been largely ambiguous on the establishment and implementation of ADIZs. On the one hand, it does not specifically prohibit establishment of ADIZs; on the other hand, several international conventions narrowly define coastal states’ airspace sovereignty and the accompanying rights to regulate foreign aircraft. These axioms can be summarized as follows:

1. ADIZs may be legally justified under customary law for entry of aircraft into territorial airspace.⁸⁹
2. States have sovereignty over the airspace directly above their territory and superjacent territorial waters.⁹⁰
3. The airspace over the high seas is beyond the jurisdiction of any state.⁹¹
4. The international legal regime does not comprehensively address state/military aircraft.⁹²
5. Civil aircraft are bounded by relevant international agreements.⁹³

Consequently, the current international legal regime has left several national security issues unresolved, including aircraft rights in the airspace above EEZs and the treatment of state/military aircraft. With the establishment of China’s ECS ADIZ, these issues have come into sharper focus as states balance their right of self-defense and the international principle of freedom of overflight.

⁸⁸ Milde, *International Air Law and ICAO*, 63.

⁸⁹ Schmitt, “Air Law and Military Operations,” 307.

⁹⁰ Chicago Convention, Article 1; UNCLOS, Article 3.

⁹¹ UNCLOS, Article 89.

⁹² Milde, *International Air Law and ICAO*, 63.

⁹³ Chicago Convention, Article 12, 38.

C. KEY UNRESOLVED ISSUES

1. Airspace above EEZs

As coastal ADIZs typically extend far beyond 200 nautical miles, they often overlap EEZs and encompass much larger regions of airspace over the high seas. Accordingly, there have been varying interpretations of airspace sovereignty in ADIZs directly above EEZs. Some states interpret EEZs as natural extensions of their sovereign territory—and plausibly the airspace above it; these states have even passed legislation in an attempt to assert partial or full sovereignty over that airspace. While the number of these states remains relatively small (seven as of 2009), they represent the alternative view to the vast majority of signatories to UNCLOS.⁹⁴ Along the same vein, China has made claims to limit military activities in the airspace directly above its EEZs. Peter Dutton points to China's narrower definition of lawful use of airspace above EEZs by referring to the 2001 U.S. Navy EP-3 incident when China claimed the United States abused its freedom of overflight by specifically targeting China. The incident demonstrated how China viewed reconnaissance flights near its borders as a "special security interest."⁹⁵ A Chinese spokesman was quoted as saying

The surveillance flight conducted by the U.S. aircraft overran the scope of "free over-flight" according to international law . . . [in that] any flight in airspace above another nation's exclusive economic zone should respect the rights of the country concerned. Thus, the U.S. plane's actions posed a serious threat to the national security of China.⁹⁶

That perspective, however, was not shared by other regional powers. The senior vice minister of Japan's Defense Agency stated that the incident occurred in "international airspace" and that he could not "fathom some aspect of China's assertions."⁹⁷ South Korea and Russia did not issue any public statements.

⁹⁴ Dutton, "Caelum Liberum," 697; Note: These countries include: Bangladesh, Burma, China, India, Iran, Malaysia, North Korea, Pakistan, Uruguay, and Guyana.

⁹⁵ Dutton, "Caelum Liberum," 704.

⁹⁶ "FM Spokesman Gives Full Account of Air Collision," *Xinhua*, April 4, 2001, <http://www.china.org.cn/english/2001/Apr/10070.htm>.

⁹⁷ Dutton, "Caelum Liberum," 705.

In contrast, the United States, the United Kingdom, and Russia are among the majority of states that view military flights over the EEZs and overlapping coastal ADIZs as legitimate freedom of navigation and overflight operations.⁹⁸ The United States, despite not being a signatory to UNCLOS, imposes regulations and practices that closely align with UNCLOS. For example, in 1983 when he established the U.S. EEZ, President Ronald Reagan reaffirmed that freedom of navigation and overflight would still apply to all countries.

Further evidence can be observed in recent state practices, which harkens back to the days of the Cold War. Russian military bombers and their escort planes have resumed military flights near and into the ADIZs of North Atlantic Treaty Organization (NATO) countries. In 2007, Russian Tupolev-95 “Bear” bombers, which are capable of carrying nuclear weapons, flew along the western edge of Norway’s coastlines, prompting the Nordic nation to scramble its alert fighters to intercept the bombers.⁹⁹ More recently, against the backdrop of the Ukrainian conflict, these types of flights have become increasingly routine. In May 2015, TU-95s were spotted over the United Kingdom’s EEZ within its ADIZ, making probing flights before returning to their home station.¹⁰⁰ While Russian planes have never strayed into the UK’s 12 nautical mile territorial sea, they have prompted numerous fighter scrambles. According to the UK’s Ministry of Defense, these flights represent more of a routine nuisance than a genuine threat.¹⁰¹ Russia also regularly conducts these flights close to North American airspace. In 2007, Canadian fighter jets intercepted Russian military planes within its Canadian Air Defense Zone (CADIZ) off Newfoundland. Since then, the United States frequently scrambles F-22s and F-15s to intercept Russian bombers off of its California and Alaska coasts.¹⁰²

⁹⁸ Dutton, “Caelum Liberum,” 697.

⁹⁹ Ibid., 702.

¹⁰⁰ Roland Oliphant, “Mapped: Just How Many Incursions into Nato Airspace Has Russian Military Made?” *Telegraph*, May 15, 2015, <http://www.telegraph.co.uk/news/worldnews/europe/russia/11609783/Mapped-Just-how-many-incursions-into-Nato-airspace-has-Russian-military-made.html>.

¹⁰¹ Ibid.

¹⁰² Barbara Starr and Sophie Tatum, “U.S. Intercepts Russian Bombers off Coast of Alaska, California,” *CNN*, July 9, 2015, <http://www.cnn.com/2015/07/09/politics/russian-bombers-u-s-intercept-july-4/>.

When asked to explain these flights, Russia's statements assert the lawful nature of the flights, claiming that "the flights by long-range aviation were made according to international rules . . . over neutral waters, without violating the borders of other states."¹⁰³ The United States agrees with this interpretation of these military flights over the EEZ as evidenced by its routine military flights over the islands in the South China Sea and near other land masses as part of freedom of navigation and overflight operations.

2. Treatment of State/Military Aircraft

Another unresolved national security issue is the treatment of state aircraft, particularly military aircraft during peacetime, that do not intend to enter territorial airspace. According to the international legal regime described above, international regulations addressing state aircraft have been sparse. Consequently, depending on how states interpret their airspace sovereignty and the legal status of other states' aircraft, procedures, as well as the consequences, can vary significantly.

In the United States, official regulations from the FAA do not explicitly distinguish between state and civil aircraft, but state practice suggests there is room for flexibility in regulatory interpretation.¹⁰⁴ Title 14, Part 99.11 of the Code of Federal Regulation (CFR) states that "No person may operate an aircraft into, within, or from a departure point within an ADIZ, unless the person files, activates, and closes a flight plan with the appropriate aeronautical facility, or is otherwise authorized by air traffic control."¹⁰⁵ This regulation makes no references to state or civil aircraft; rather it uses the term *person*. This vague language implies that U.S. regulations apply to all aircraft. Still, as Dutton submits, "While U.S. ADIZ regulations do not explicitly exempt state aircraft, their application . . . [does] not apply to foreign state aircraft not bound for U.S. territorial airspace."¹⁰⁶ A U.S. military legal scholar also supports this practice: "While the United

¹⁰³ Dutton, "Caelum Liberum," 703.

¹⁰⁴ *Ibid.*, 698.

¹⁰⁵ ADIZ Flight Plan Requirements, 14 C.F.R. § 99.11.

¹⁰⁶ Dutton, "Caelum Liberum," 699.

States has established an ADIZ, it does not apply its ADIZ procedures to foreign aircraft not intending to enter U.S. airspace.”¹⁰⁷ Indeed, in June 2008, when Russian bombers resumed regular military flights in the U.S. Alaskan ADIZ without filing flight plans—contrary to FAA regulations—the U.S. military downplayed the apparent violation despite launching fighters to intercept and monitor the bombers. According to General Victor Renuart Jr., then commander of U.S. Northern Command (NORTHCOM), “If it is a Russian aircraft on a training mission, we allow them to continue to do their job.”¹⁰⁸ Thus, within this context, U.S. practices appear to depart from U.S. official regulations.

As for operations in foreign coastal states’ ADIZs, U.S. military regulations also follow similar guidelines. Christopher Petras cites, “DOD regulations make clear the U.S. position that military aircraft transiting through foreign ADIZ without intending to penetrate foreign sovereign airspace are not required to follow foreign ADIZ procedures.”¹⁰⁹ Therefore, DOD aircraft are instructed to disregard foreign ADIZ procedures, unless the United States has any prior agreements.¹¹⁰ Michael Schmitt notes, “It is the policy of some States, such as the United States, to refuse to comply with ADIZ procedures when its State aircraft do not seek entry [into national airspace].”¹¹¹ These statements suggest an acknowledged practice of state aircraft refusing to comply with foreign ADIZ requirements.

China, in contrast to United States, holds a slightly different perspective concerning military flights, especially reconnaissance flights, above its coastal EEZ. While China accepts the distinction between civil and state aircraft, it challenges the limits of states’ overflight rights. During the EP-3 incident in 2001, a Chinese spokesman argued that the U.S. military reconnaissance aircraft overstepped its rights because it

¹⁰⁷ Petras, “Law of Air Mobility,” 64–65.

¹⁰⁸ Rowan Scarborough, “Russian Flights Smack of Cold War,” *Washington Times*, June 26, 2008, <http://www.washingtontimes.com/news/2008/jun/26/russian-flights-smack-of-cold-war/>.

¹⁰⁹ Petras, “Law of Air Mobility,” 65.

¹¹⁰ *Ibid.*

¹¹¹ Schmitt, “Air Law and Military Operations,” 307.

actively “targeted” China.¹¹² Reconnaissance and surveillance aircraft, in general, are considered threats to China’s security and thus do not enjoy the same overflight rights as other State aircraft. That policy is further underscored in Chinese academia. A paper published in 2005 by China Institute for International Strategic Studies asserts

“Freedom of overflight” . . . [does] not include the freedom to conduct military and reconnaissance activities in [the coastal State’s] superjacent airspace. Such activities encroach or infringe on the national security interest of the coastal State, and can be considered a use of force or a threat to use force against that State.¹¹³

These varying interpretations of state aircraft and their rights highlight the fundamental issues with operations within unilaterally established ADIZs that inherently overlap into international airspace. Rather than alleviating security concerns—as was the original purpose of ADIZs—the lack of clarity within the current legal regime, combined with varying state practices, has consequently created friction that heightened the likelihood of conflict.

D. CONCLUSION

Overall, ADIZs represent an important national security tool for coastal states to defend their sovereign territories. While not expressly prohibited under international law, ADIZs still have to adhere to international laws and principles—namely freedom of navigation and overflight. Rooted in the principles of the Chicago Convention and UNCLOS, they enable global commons and facilitate the development of clear standards that integrally improve safety and advance aviation progress. Still, the current legal regime has been lacking in specific rules and procedures, leaving key national security issues, such as airspace sovereignty over EEZs and the treatment of state aircraft, largely unresolved. Consequently, some countries have made efforts to reinterpret the scope of the principles of international law. The next chapter will explore how China’s declaration of the ECS ADIZ has contributed to confusion and stoked tensions in the region.

¹¹² “U.S. Seriously Violates International Law (04/15/01),” Embassy of the People’s Republic of China in the United States of America, April 15, 2001, <http://www.china-embassy.org/eng/zt/zjsj/t36383.htm>.

¹¹³ Reng Xiaofeng and Chen Xizhong, “A Chinese Perspective,” *Marine Policy* 29, no. 2 (2005), 142.

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IV. THE ECS ADIZ AND REGIONAL RESPONSES

As highlighted in the previous chapter, the international legal regime has been largely insufficient in addressing ADIZs, leaving the establishment and implementation to individual states' interpretation. When China unilaterally declared its East China Sea ADIZ in November 2013, several countries objected or expressed strong concerns, including Japan and the United States, which accused China of provocation and attempts to alter the status quo. Against the backdrop of the Senkaku/Diaoyu Islands disputes, China's declaration fueled speculation among scholars and policymakers that China uses the ADIZ as an offensive maneuver and may impose similar zones in the South China Sea. In contrast, China claimed it had the right to establish and enforce its ECS ADIZ. Irrespective of the motives, the broader implications cannot be overlooked—the ECS ADIZ aggravated existing regional tensions. Nevertheless, policy lessons can be gleaned from the regional responses of Japan, South Korea, Taiwan, and Vietnam, which can ultimately illuminate possible policy pathways available to Vietnam should China implements an SCS ADIZ. This chapter will explore the rationale behind China's ECS ADIZ and why it has been so controversial. Furthermore, it will examine the regional policy responses to identify the range of policy options for Vietnam.

A. ECS ADIZ

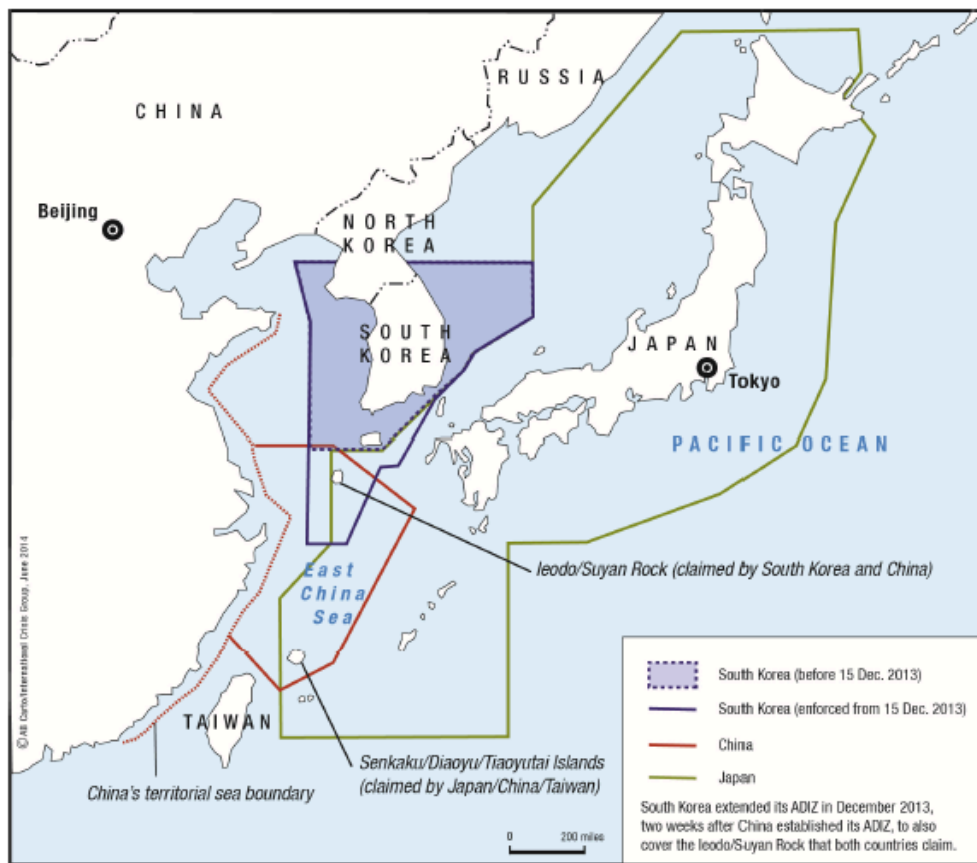
On November 23, 2013, China's Ministry of National Defense (MND), unilaterally and without consulting with other states, declared an ADIZ over the ECS. It stated

The government of the People's Republic of China announces the establishment of the East China Sea Air Defense Identification Zone. . . . The zone includes the airspace within the area enclosed by China's outer limit of the territorial sea and the following six points: 33°11'N (North Latitude) and 121°47'E (East Longitude), 33°11'N and 125°00'E, 31°00'N

and 128°20'E, 25°38'N and 125°00'E, 24°45'N and 123°00'E, 26°44'N and 120°58'E.¹¹⁴

A closer examination of the coordinates reveals key attributes within China's ECS ADIZ. First, the new ADIZ overlaps portions of Japanese and South Korean ADIZs—both of which have been in existence since the 1950s. Second, it encompasses the disputed Senkaku/Diaoyu Islands, which Japan and Taiwan also claim. Moreover, it includes a large percentage of the ECS, where there is considerable aviation traffic. Figure 2 outlines the new ADIZ with respect to preexisting regional ADIZs.

Figure 2. East China Sea ADIZs



Source: International Crisis Group, "Old Scores and New Grudges: Evolving Sino-Japanese Tensions," *Asia Report* 258 (July 2014): 37.

¹¹⁴ "Statement by the Government of the People's Republic of China on Establishing the East China Sea Air Defense Identification Zone," *Xinhuanet*, November 23, 2013, http://news.xinhuanet.com/english/china/2013-11/23/c_132911635.htm.

With the geographic border defined, the PRC moved to regulate aircraft flying in the new zone. The PRC's MND issued the following procedures for all aircraft via its "Statement by the Government of the People's Republic of China on Establishing the East China Sea Air Defense Identification Zone":

Flight plan identification. Aircraft flying in the East China Sea Air Defense Identification Zone should report [their] flight plans to the Ministry of Foreign Affairs of the People's Republic of China or the Civil Aviation Administration of China.

Radio identification. Aircraft flying in the East China Sea Air Defense Identification Zone must maintain two-way radio communications, and respond in a timely and accurate manner to the identification inquiries from the administrative organ of the East China Sea Air Defense Identification Zone or the unit authorized by the organ.

Transponder identification. Aircraft flying in the East China Sea Air Defense Identification Zone, if equipped with [a] secondary radar transponder, should keep the transponder working throughout the entire course.

Logo identification. Aircraft flying in the East China Sea Air Defense Identification Zone must clearly mark their nationalities and the logo of their registration identification in accordance with related international treaties.¹¹⁵

In short, aircraft have to provide advance flight plans, transponder codes, logo identification, and maintain radio contact with Chinese authorities. Failure to abide by these rules would result in "defensive emergency measures" by Chinese armed forces.¹¹⁶ The details of those measures remains unclear.

B. BASIS OF CRITICISM

In its follow-up clarification statement on the same day, China's MND spokesman Yang Yujun defended the new ECS ADIZ, claiming that the ADIZ did not depart from international practices and that China's new zone was aimed at guarding against potential

¹¹⁵ Quiang Hou, "Announcement of the Aircraft Identification Rules for the East china Sea Air Defense Identification Zone of the P.R.C.," *Xinhuanet*, November 23, 2013, http://news.xinhuanet.com/english/china/2013-11/23/c_132911634.htm.

¹¹⁶ *Ibid.*

air threats.¹¹⁷ Indeed, regional neighbors such as Japan, South Korea, and the Republic of Taiwan (ROC) all have previously established ADIZs, which share similar rules.¹¹⁸ Moreover, there had not been any documented protests against the establishment of ADIZs prior to the ECS ADIZ announcement.¹¹⁹ Why, then, was there such an international uproar over China's ECS ADIZ?

The first point of contention stems from the manner in which China established the zone. Normally, states coordinate with neighboring countries to deconflict overlapping aviation zones. For example, states coordinate through ICAO to assign air traffic control responsibilities through special FIRs.¹²⁰ These are large regions of airspace for which coastal states have assumed air traffic control responsibility. Along the similar lines, the United States and Canada, through the North American Aerospace Defense Command (NORAD), jointly administer the two countries' ADIZs. Although admittedly the two allies share a common interest in securing North American airspace, it is perhaps unrealistic for rivals such as Japan and China to jointly administer their ADIZs. Nevertheless, in this particular case, the Chinese government made no such efforts to consult with its East Asian neighbors prior to declaring its ADIZ, an action which created a large overlap with preexisting Japanese, South Korean, and Taiwanese ADIZs.

This overlap was a major point of contention with Japanese officials because they viewed the move as an attempt by China to exert territorial control over the disputed Senkaku/Diaoyu Islands.¹²¹ Before the declaration, the East Asian countries' ADIZs were sufficiently deconflicted with very few small overlaps.¹²² In contrast, the new Chinese ECS ADIZ produced a large overlapping area; it encompassed not only the disputed

¹¹⁷ "China Exclusive: Defense Ministry Spokesman Responds to Air Defense Identification Zone Questions," *Xinhuanet*, November 23, 2013, http://news.xinhuanet.com/english/china/2013-11/23/c_132912145.htm.

¹¹⁸ Zheng, "Justification and Limits of ADIZs," 198.

¹¹⁹ Abeyratne, "Search of Theoretical Justification," 94.

¹²⁰ Petras, "Law of Air Mobility," 65.

¹²¹ International Crisis Group, "Old Scores and New Grudges," 10.

¹²² Pedrozo, "Bull in the China Shop" 73.

Senkaku/Diaoyu Islands (which Japan, China, and Taiwan also claim), but also extended over joint U.S. military and JASDF training and bombing ranges (see Figure 2).

In a narrower lane, the short timing between the announcement and the enforcement date was frequently criticized by policymakers and operators. The announcement was made on the morning of the November 23, 2013, and became effective the same morning at 10:00 a.m.—leaving little room for states and operators to acquaint themselves with the new rules.¹²³ Coupled with the threat of unspecified emergency defensive measures from China’s military, strategic and pragmatic concerns from both civilian operators and states were understandable.

A second major criticism involves not only the rules themselves, but also how China might apply them. The most contentious of these rules is the insistence that all foreign aircraft—both civil and state—entering China’s ECS ADIZ forward a flight plan to China’s aviation authorities, even if they do not intend to penetrate the PRC’s territorial airspace.¹²⁴ Theoretically, this requirement would allow Chinese authorities to determine the destination, route of flight, type of aircraft, and many other parameters that could be corroborated to determine the aircraft’s intent. This demand is at odds with Japanese and U.S. perspectives, which differentiate between civil and state aircraft, as well as between those aircraft simply transiting ADIZ airspace and those intending to fly into territorial airspace. According to U.S. Navy’s *Commander’s Handbook on the Law of Naval Operations*, “The United States does not recognize the right of a coastal nation to apply its ADIZ procedures to foreign aircraft not intending to enter national airspace nor does the United States apply its ADIZ procedures to foreign aircraft not intending to enter U.S. airspace.”¹²⁵

Many aviation scholars have argued against this requirement to file advance flight plans as well. Lowell Bautista and Julio Amador contend, “The Chinese ADIZ in the East

¹²³ Jun Osawa, “China’s ADIZ over the East China SEA: A ‘Great Wall in the Sky’?” *Brookings Institute*, December 17, 2013, <http://www.brookings.edu/research/opinions/2013/12/17-china-air-defense-identification-zone-osawa>.

¹²⁴ Pedrozo, “Bull in the China Shop,” 74.

¹²⁵ Department of the Navy, Office of the Chief of Naval Operations et al., *Commander’s Handbook*, 2–13.

China Sea imposes requirements [on] both civilian and military aircraft [while] all other ADIZs in the world apply only to civilian aircraft. This is clearly contrary to standard international practice.”¹²⁶ Satoru Mori, a China foreign policy observer, was more direct, stating that China’s demands for all foreign aircraft flying inside its ADIZ to submit advance flight plans “lack[s] sufficient bases in international law.”¹²⁷ The United States supports this position, insisting upon the right of U.S. military aircraft to operate without complying with coastal states’ ADIZ rules provided the aircraft do not intend to enter the territorial airspace of that state.¹²⁸ On November 26, 2013, three days after the ECS ADIZ announcement, the United States defended this position by flying two USAF B-52 bombers through the ADIZ without submitting advance flight plans or notifying Chinese authorities.¹²⁹ China monitored the aircraft but did not take any other action. The message was clear: the United States would not allow China’s rules to go unchallenged.

That aside, China’s filing requirements closely mirror other states’ published rules. Michael Swaine notes that the published procedures of Australia, the Philippines, Myanmar, and Taiwan require filing advance flight plans but have no specific references to aircraft destination.¹³⁰ Furthermore, according to Taiwan’s CAA, Japan requires Taiwanese airlines to submit flight plans when traversing Japan’s ADIZ.¹³¹ In response to this particular criticism, China’s Defense Ministry spokesperson Geng Yansheng provided this defense: “There is no unified international rule as to how to ask other countries to report flight plans to the ADIZ demarcators. Many countries require aircraft flying over their air defense identification zones to report flight plans beforehand. China

¹²⁶ Bautista and Amador, “Complicating the Complex,” 1.

¹²⁷ Satoru Mori, “Countering Beijing’s Unilateral Revisionist Actions in the East China Sea: The Case for a Restraint Compellence Approach,” in *East China Sea Tensions: Perspectives and Implications*, ed. Richard Pearson (Washington, DC: Maureen and Mike Mansfield Foundation, 2014), 57.

¹²⁸ Zheng, “Justification and Limits of ADIZs,” 212.

¹²⁹ “US B-52 Bombers Challenge Disputed China Air Zone,” *BBC*, November 26, 2013, <http://www.bbc.com/news/world-asia-25110011>. Statement from the Pentagon. Col Steve Warren.

¹³⁰ Swaine, “Chinese Views and Commentary,” 5.

¹³¹ *Ibid.*

is not special in doing so.”¹³² Within this context, China’s rules did not violate international law, and the criticism China faced had little merit.

C. CHINA’S RATIONALE FOR THE ECS ADIZ

Nonetheless, as international criticism of the ECS ADIZ mounted, it also drew speculations that China would implement a similar zone in the South China Sea. Before such an assumption can be corroborated, however, we should examine why China established its ECS ADIZ to determine the basis for which China might declare an SCS ADIZ. Despite being characterized as aggressive, coercive, or antagonistic, China’s ECS ADIZ was a deliberate policy choice. Hence, it is necessary to explain China’s rationale for establishing the ECS ADIZ.

One possible explanation is that the ECS ADIZ is a natural evolution of China’s national security apparatus to best defend the state against what it perceives as aerial threats. In this explanation, the purpose is to strengthen safety and security while preserving stability. A chronology of events, starting with the U.S. Navy EP-3 incident in 2001, points to a need for establishing such a zone. Beijing’s annoyance with what it views as U.S. harassment in the South China Sea with its intelligence-gathering flights and freedom of navigation and overflight operations may have been a contributing factor in China’s decision to establish the ECS ADIZ. Additionally, despite becoming a regional and global economic power, China had not established its own defensive zone. Compared to its regional neighbors such as Japan and South Korea, this shortfall represents a strategic deficiency. Early indications suggest that discussion was already underway as early as the 2008 Beijing Olympics to establish an ADIZ over the ECS and the Strait of Taiwan to deal with potential air threats.¹³³ When China finally declared the ECS ADIZ, MND spokesman Geng Yansheng clarified China’s intent in the December 3, 2013 statement:

¹³² “Defense Ministry Spokesman on China’s Air Defense Identification Zone,” *Xinhuanet*, December 23, 2013, http://news.xinhuanet.com/english/china/2013-12/03/c_132938762.htm.

¹³³ Dutton, “Caelum Liberum,” 691.

[The ADIZ is a] necessary measure for China to protect its state sovereignty and territorial and airspace security. It is conducive to maintaining flying safety in international airspace, and is in line with international laws and conventions. . . . An ADIZ is essentially different from territorial airspace or no-fly zones. It is not a country's territorial airspace, but an international airspace demarcated outside the territorial airspace for the purpose of identification and early warning; it is not a no-fly zone, and will not affect the freedom of overflight, based on international laws, of other countries' aircraft. . . . The zone does not aim at any specific country or target, nor does it constitute a threat to any country or region.¹³⁴

Another potential explanation for China's rationale points to rising Sino-Japanese tensions spilling over from the Senkaku/Diaoyu island disputes. In the two years leading up to Japan's nationalization of the Senkaku/Diaoyu Islands, the Japanese unilateral decision to expand its ADIZ over Yonaguni Island highlighted to China's leadership the significance an ADIZ could play in national defense policies. When Japan "nationalized" the Senkaku/Diaoyu Islands in September 2012, China was further enraged. According to Ren Xiao, a China scholar,

The ADIZ is a continuation of China's reactions to Japan's "nationalization" of the Diaoyu/Senkaku islands. . . . Infuriated by Japan's actions, Beijing is determined not to let Japan have unilateral de facto control of the islands. China keeps sending coast guard ships to the adjacent waters to form a situation of joint but separate patrolling. In fact, China is aiming for a new status quo, in which China will reciprocate Japan's actions.¹³⁵

In a similar vein, China also felt that its restraint in the years leading up to the dispute was underappreciated and that Japan took advantage of the situation to consolidate controls of the islands.¹³⁶ Additionally, as another scholar observes, Japanese threats to shoot down China's drones flying over the disputed area did not go over well

¹³⁴ "Defense Ministry Spokesman on China's Air Defense Identification Zone," Embassy of the People's Republic of China in the United States of America, December 4, 2013, <http://www.china-embassy.org/eng/zt/dhfkbsbq2/t1105721.htm>.

¹³⁵ Ren Xiao, "The ADIZ Imbroglio: A Chinese View," *Rising Powers Initiative*, December 19, 2013, <http://www.risingpowersinitiative.org/the-adiz-imbroglio-a-chinese-view/>.

¹³⁶ Xiao, "ADIZ Imbroglio."

with China's leadership.¹³⁷ A statement issued by China's MND echoed this assessment. In a strongly worded response on December 3, 2013, MND spokesman noted that Japan had been

frequently sending vessels and planes to disturb Chinese ships and planes . . . openly making provocative remarks such as shooting down Chinese drones . . . creating excuses for revising its current constitution and expanding its military, trying to deny the result of World War Two. China [had] to take necessary reactions.¹³⁸

In this context, the ECS ADIZ was perhaps a small but critical policy choice to establish greater parity with Japan regarding the Senkaku/Diaoyu Islands and an effort to force it to recognize an ongoing dispute—something that Japan had been reluctant to do in the past.¹³⁹ In short, it was a power play to force Japan to the negotiating tables.

D. TOWARD A SOUTH CHINA SEA ADIZ

China has the option to declare an SCS ADIZ when it feels its objectives can be achieved with an ADIZ. As evidenced in its rationale for the ECS ADIZ, an SCS ADIZ may be a natural progression of extending China's early warning network. With the United States continuing to intensify its freedom of navigation and overflight operations in and around the Spratly Islands, this action will inevitably annoy—if not anger—Beijing. An SCS ADIZ, in this case, may seem like a logical response to counter what China views as activities beyond the scope of freedom of overflight. Still, China needs time to prepare. Immediately following the ECS ADIZ declaration, China's Defense Ministry announced that it “will establish other air defense identification zones at an appropriate time after completing preparations.”¹⁴⁰ It has been over two years since

¹³⁷ Mark J. Valencia, “The East China Sea Disputes: History, Status, and Ways Forward,” *Asian Perspective* 38, no. 2 (April-June 2014): 184.

¹³⁸ Embassy of the People's Republic of China, “Defense Ministry Spokesman”; “Policy Alert: China's New Air Defense Zone Triggers Flurry of Activity from Asia Powers,” *Rising Powers Initiative*, December 6, 2013, <http://www.risingpowersinitiative.org/policy-alert-chinas-new-air-defense-zone-triggers-flurry-of-activity-from-asia-powers/>.

¹³⁹ Jane Perlez, “Chinese Leader's Rise Came with New attention to Dispute with Japan,” *New York Times*, December 2, 2013, http://www.nytimes.com/2013/12/03/world/asia/chinese-leaders-rise-came-with-new-attention-to-dispute-with-japan.html?_r=0.

¹⁴⁰ Richard Javad Heydarian, “ADIZ Stirs Fears for South China Sea,” *Asia Times Online*, December 6, 2013, http://www.atimes.com/atimes/Southeast_Asia/SEA-01-061213.html.

China declared the ECS ADIZ and evidence points to significant progress toward the possibility that it will establish another ADIZ. Chinese land reclamation and the construction of a 10,200 feet runway on Fiery Cross Reef confirms analysts' suspicions that China is improving its infrastructure to better support both maritime and aerial enforcement operations—ahead of any officially declared ADIZ.¹⁴¹ The runway would extend aircraft combat range and reduce the need for aerial refueling. More recently, China has deployed surface to air missiles to Woody Island in the Paracels.¹⁴²

Should China's motivation be to achieve parity—as highlighted by the Senkaku/Diaoyu dispute with Japan—with regional claimants, the absence of an SCS ADIZ suggests that it currently does not feel that the threat in the South China Sea is sufficient to establish an ADIZ. Admiral Sun Jianguo, the PLA's deputy chief of staff, communicated this sentiment at the Shangri-La Dialogue on May 31, 2015, commenting that China could set up another ADIZ, “if it feels that it's facing a large enough threat in the South China Sea.”¹⁴³ Nevertheless, observers point to China's push to exert civilian airspace authority over the disputed islands as a precursor to military enforcement. China has opened up the land on the reclaimed island to private investments and plans to start regular flights to it later in 2016.¹⁴⁴ Still, the broader implication is that the push for control will anger claimants. The pattern is aligning for a Chinese SCS ADIZ in the near, if not immediate, future. As one analyst asserts:

A Chinese ADIZ over the South China Sea appears to be a looming possibility. . . . China might start with an ADIZ over the Paracels, where Vietnam has been steadfastly disputing the Chinese control. Later on, when its air force has the necessary long-range patrol capability, or when

¹⁴¹ Carl Thayer, “No, China Is Not Reclaiming Land in the South China Sea,” *Diplomat*, June 7, 2015, <http://thediplomat.com/2015/06/no-china-is-not-reclaiming-land-in-the-south-china-sea/>.

¹⁴² “China ‘Has Deployed Missiles in South China Sea’ – Taiwan,” *BBC*, February 17, 2016, <http://www.bbc.com/news/world-asia-china-35592988>.

¹⁴³ Feng Zhang, “Should Beijing Establish an Air Defense Identification Zone over the South China Sea?” *Foreign Policy*, June 4, 2015, <http://foreignpolicy.com/2015/06/04/should-beijing-establish-an-air-defense-identification-zone-over-the-south-china-sea/>.

¹⁴⁴ Michael Martina and David Brunnstrom, “China Seeks Investment for Disputed Islands, to Launch Flights,” *Reuters*, January 15, 2016, <http://www.reuters.com/article/us-southchinasea-china-idUSKCN0UT0QR>.

its aircraft carrier force is ready, China may even extend its ADIZ further southward to include the Spratlys.¹⁴⁵

Consequently, if China declares its SCS ADIZ, it is likely to impose similar—if not exactly—the same ECS ADIZ rules and regulations. While the boundaries of such a zone are pure speculation, it is not unreasonable to expect an overlap of the Vietnamese ADIZ given the countries' close proximity to each other. Vietnam would be forced to respond to this development.

E. REGIONAL RESPONSE TO CHINA'S ECS ADIZ

1. Japan

When China declared its ECS ADIZ, Japan's leaders were understandably highly critical and confrontational. First, the new ADIZ overlapped with existing zones that Japan and the ROK had established decades earlier.¹⁴⁶ Second, part of the new ADIZ covers the airspace over the Senkaku/Diaoyu Islands, which Japan currently occupies and administers. Japan's officials saw the move as an attempt to "pressure Japan to concede on the islands."¹⁴⁷ As foreign policy observers argued at the time, these views were part of the larger strain in bilateral relations between Japan and China that was newly exacerbated in 2012 when Japan cabinet ministers visited the Yasakuni Shrine as Chinese protesters demonstrated on the disputed Senkaku/Diaoyu Islands.¹⁴⁸ Tensions in the region were rapidly rising. Indeed, as Mark Valencia asserted at the time, "Raw nationalism has reared its ugly head in both countries and is influencing leadership decisions on international and domestic issues."¹⁴⁹ Thus, nationalism conceivably influenced why Japan's leadership took an unusually hard line when responding to the Chinese ECS ADIZ declaration.

¹⁴⁵ Termsak Chalermpananupap, "ASEAN: Managing External Political and Security Relations," in *Southeast Asian Affairs 2014*, ed. Daljit Singh (Singapore: Institute of Southeast Asian Studies, 2014), 61.

¹⁴⁶ Pedrozo, "Bull in the China Shop," 66.

¹⁴⁷ International Crisis Group, "Old Scores and New Grudges," 10.

¹⁴⁸ Valencia, "East China Sea Disputes," 183.

¹⁴⁹ *Ibid.*, 184.

As tensions escalated, Japan chose to respond sharply to the new zone. The government, through the Ministry of Foreign Affairs (MOFA), issued a statement expressing a “deep concern about China’s establishment of such zone . . . [which] may cause unintended consequence in the East China Sea.”¹⁵⁰ The MOFA also declared that the measures “have no validity whatsoever on Japan” and demanded that China rescind the zone.¹⁵¹ On November 24, 2013, MOFA issued another statement by Minister Fumio Kishida saying that Japan “will continue to respond firmly but in a calm manner against China’s attempt to unilaterally alter the status quo by coercive measures with determination to defend resolutely its territorial land, sea and airspace.”¹⁵² When China sent an air patrol to back up its new ECS ADIZ on November 23, 2013, Japan scrambled its alert fighters to intercept the patrol and escorted it out of the Japanese ADIZ.¹⁵³

On the commercial aviation side, reports immediately surfaced that Japanese airliners were initially obeying the China’s identification procedures.¹⁵⁴ Hearing of these reports, the government attempted to rein in its domestic carriers and ordered them to ignore the new Chinese rules for flights that did not enter China’s territorial airspace. A few days later, according to BBC news, Japan Airlines and All Nippon Airlines—both Japanese national carriers—announced that they would stop filing advance flight plans with China for flights through the ADIZ.¹⁵⁵ Since then, Japan, along with the United States, has sought legal actions against China through ICAO. It has brought forward a proposal to determine whether China’s ECS ADIZ threatens the “order and safety of

¹⁵⁰ “Statement by the Minister for Foreign Affairs on the announcement on the ‘East China Sea Air Defense Identification Zone’ by the Ministry of National Defense of the People’s Republic of China,” Ministry of Foreign Affairs Japan, November 24, 2013, http://www.mofa.go.jp/press/release/press4e_000098.html.

¹⁵¹ “Statement by the Minister for Foreign Affairs on the announcement on the ‘East China Sea Air Defense Identification Zone’ by the Ministry of National Defense.”

¹⁵² *Ibid.*

¹⁵³ Valencia, “East China Sea Disputes,” 200.

¹⁵⁴ “Japan’s Airlines to Obey Contentious China ADIZ Rules,” *Japan Times*, November 26, 2013, <http://www.japantimes.co.jp/news/2013/11/26/national/japans-airlines-to-obey-contentious-china-adiz-rules/>.

¹⁵⁵ *BBC*, “US B-52 Bombers Challenge.”

international aviation.”¹⁵⁶ The effort sought support from ICAO council members, namely the UK, Australia, and members of ASEAN, in the hopes of pressuring China to rescind the zone.

Diplomatically, Japan has relied on its long-time ally, the United States, to also bolster its hard-line stands. Immediately after the ECS ADIZ announcement, the United States condemned China’s ECS ADIZ. U.S. secretary of state John Kerry commented, “The United States does not recognize that zone and does not accept it. The zone should not be implemented, and China should refrain from taking similar unilateral actions elsewhere in the region, and particularly over the South China Sea.”¹⁵⁷ During his December 2013 Asia trip, Vice President Joe Biden also accused China of unilaterally upsetting the status quo—echoing Prime Minister Abe’s concerns.

Despite the blunt rhetoric from the United States, the message was mixed. The U.S. FAA issued a notice to airmen (NOTAM) and instructed U.S. carriers to submit the required flight plans to the Civil Aviation Administration of China (CAAC), regardless of whether their aircraft intended to enter Chinese sovereign airspace.¹⁵⁸ As scholars have noted, this action severely undercut Japan’s efforts to delegitimize the rules imposed by the China’s new ECS ADIZs and ultimately emboldened Beijing’s efforts to change the status quo.¹⁵⁹ Washington tried to explain this inconsistency by portraying the FAA’s guidance as a safety precaution amid the ambiguity and tensions in the region. Still, the FAA’s guidance to its commercial carriers had a broader impact: other nations, including Singapore, Australia, and Thailand, eventually followed the lead of the United States.

As a long-term solution, Japan has sought to bolster its military capabilities to counter the Chinese threat. Defense spending has grown steadily over the last few years; the JSDF defense budget grew 2.8 percent to 4.98 trillion yen (\$42 billion) in 2015.¹⁶⁰ Its

¹⁵⁶ Rinehart and Elias, *China’s Air Defense Identification Zone*, 18; “U.S., Japan, to Raise China ADIZ at U.N. Meeting,” *Japan Times*, February 27, 2014, <http://www.japantimes.co.jp/news/2014/02/27/national/politics-diplomacy/u-s-japan-to-raise-china-adiz-at-u-n-meeting/#.VqGEjVUrKUK>.

¹⁵⁷ Yilmaz, “China’s ADIZ in the East China Sea.”

¹⁵⁸ Pedrozo, “Bull in the China Shop,” 77.

¹⁵⁹ Ibid.

¹⁶⁰ Fackler, “Test of Wills.”

latest fiscal 2016/2017 budget increased to 5.05 trillion yen (\$41.4 billion).¹⁶¹ Additionally, Japan is deploying E-2 reconnaissance planes to track airborne aircraft and building up new radar stations on Yonaguni Island, its newest outpost, located 150 kilometers south of the disputed Senkaku/Diaoyu Islands.¹⁶² Coupled with the successful reinterpretation of Article 9 of the Japanese constitution, which enables the military to perform a wider array of missions, these actions to normalize Japan's military have underscored Japan's efforts to strengthen its regional claims and counter perceived Chinese assertiveness.

2. South Korea

The ROK, like Japan, did not react positively to China's ECS ADIZ. The new ADIZ overlapped over the disputed Socotra Rock, which the ROK and China claimed.¹⁶³ The island, also known as Ieodo by South Korea and Suyan Rock by China, is within both countries' EEZs and is also home to a small South Korean ocean research platform.¹⁶⁴ Before November 23, 2013, the feature fell within the Japanese ADIZ (the South Korean ADIZ did not encompass the rock). Echoing Japan, the South Korean Ministry of Land, Infrastructure, and Transport initially asserted that civil aircraft transiting China's ECS ADIZ should not submit flight plans to China. In early December 2013, the ROK conducted military exercises near Ieodo within the newly established zone.¹⁶⁵

That aside, the ROK's reaction was much more tempered than the Japanese's response. In previously scheduled bilateral meetings between senior defense officials at the end of November 2013, South Korean officials used the opportunity to quietly ask China to amend its ADIZ so it would not overlap with South Korea's. ROK vice defense

¹⁶¹ Franz-Stefan Gady, "Japan Approves Record Defense Budget," *Diplomat*, December 28, 2015, <http://thediplomat.com/2015/12/japan-approves-record-defense-budget/>.

¹⁶² Shannon Tiezzi, "Japan to Station Troops on Yonaguni, near Disputed Islands," *Diplomat*, April 19, 2014, <http://thediplomat.com/2014/04/japan-to-station-troops-on-yonaguni-near-disputed-islands/>.

¹⁶³ Pedrozo, "Bull in the China Shop," 73.

¹⁶⁴ Note: While it was included in the Japanese ADIZ prior to the PRC's announcement of its ECS ADIZ, Japan does not have any claims on the feature.

¹⁶⁵ Swaine, "Chinese Views and Commentary," "12.

minister Baek Seung-joo conveyed “strong regret” that the ADIZ overlapped Jeodo Rock and requested that China amend its boundaries to exclude the island feature.¹⁶⁶

To some ROK policy observers, the proposal to amend the boundaries was seen as an effort to “delink” the ROK’s problems from those of Japan and the United States. Indeed, ROK–China bilateral relations had benefited from recent rising anti-Japan sentiments in China. As suggested by Victor Cha, if China had made an exception for South Korea, the ROK would have tacitly accepted the new zone.¹⁶⁷ China, however, ultimately rejected the proposal—forcing the ROK to seek an alternative solution. On December 8, 2013, the ROK expanded its own ADIZ 186 nautical miles southward to correspond to its own air traffic control region.¹⁶⁸

With expansion, the ROK had made a partial response to the ECS ADIZ. Questions on whether civilian airlines should comply still remained unresolved. On December 11, 2013, after several weeks of uncertainty, South Korean transport minister Suh Seoung-hwan announced that South Korean commercial carriers would be given individual authority to abide by the Chinese ADIZ rules.¹⁶⁹ With this discretion, he also stressed that the decision of individual airlines was in no way representative of Seoul’s official position against the zone. The following day, Asiana Airlines and Korean Air joined the long list of carriers instructing its operators to submit advance flight plans to Chinese authorities.

3. Taiwan

Taiwan’s official reaction to the ECS ADIZ was much more muted than those of Japan and even South Korea.¹⁷⁰ The Executive Yuan, the highest administrative organ,

¹⁶⁶ Pedrozo, “Bull in the China Shop,” 70.

¹⁶⁷ Victor Cha, “Korea’s Mistake on China’s ADIZ,” Center for Strategic & International Studies, December 2, 2013, http://csis.org/files/publication/131202_Koreas_Mistake_on_Chinas_ADIZ_Controversy.pdf.

¹⁶⁸ Pedro, “Bull in the China Shop,” 70.

¹⁶⁹ Michelle Florcruz, “South Korea’s Asiana Airlines And Korean Air Abide By Chinese Air Defense Identification Zone (ADIZ),” *International Business Times*, December 12, 2013, <http://www.ibtimes.com/south-koreas-asiana-airlines-korean-air-abide-chinese-air-defense-identification-zone-adiz-1506882>.

¹⁷⁰ Tan, “Tipping the Scale,” 134.

took almost a week to develop and release an official statement outlining Taiwan's position. During that time, Taiwan's civilian airlines were already submitting flight plans to China's aviation authorities. When the statement was published on November 29, 2013, it was a subdued reaction. The statement read:

The Republic of China will staunchly defend its sovereignty over the Diaoyutai Islands. . . . [It also] express[ed] serious concerns regarding this matter to mainland China through appropriate channels. . . . Standard military practices will not be changed due to the establishment China's East China Sea ADIZ. . . . The Civil Aeronautics Administration of the Ministry of Transportation and Communications will relay the filing of flight plans for civil aircraft in accordance with relevant regulations and practices of the International Civil Aviation Organization (ICAO) regarding FIR notification, based on requests from airline companies in Taiwan and abroad, to ensure the safety of passengers.¹⁷¹

Undoubtedly, the relatively neutral tone of the statement reflected President Ma Ying-jeou's desires to improve the cross-Straits relationship with China, in stark contrast to Japanese statements. Foreign policy observers have commented that Taiwan was in a no-win scenario, forced to walk a tightrope with Beijing while appearing to accommodate its backers—mainly the United States and Japan.¹⁷² On the one hand, Ma's efforts to improve relations with Beijing through the East Asian Peace Initiative could have been jeopardized if he came off too harshly. On the other hand, completely acquiescing to the PRC would have undermined support from the United States and Japan.

Nonetheless, Ma's approach and the low-key response from the government had direct, negative domestic political consequences. After protests from the opposition party, the Democratic Progressive Party (DPP), the legislature issued a joint statement stating that "a rigorous protest should be submitted to China and efforts made to fall in step with allies in the region. Flight plans should not have to be submitted."¹⁷³ Ma attempted to

¹⁷¹ "Executive Yuan Responds Firmly to Mainland China's East China Sea ADIZ Declaration," *Executive Yuan*, November 29, 2013, http://www.ey.gov.tw/en/News_Content2.aspx?n=1C6028CA080A27B3&s=88C061B0B11D4AC8.

¹⁷² J. Michael Cole, "China's ADIZ: Taiwan's Dilemma," *Diplomat*, November 28, 2013, <http://thediplomat.com/2013/11/chinas-adiz-taiwans-dilemma/>.

¹⁷³ "Taiwan Shows Restrained Reaction to China's ADIZ," *Asahi Simbun*, November 30, 2013, http://ajw.asahi.com/article/special/isles_dispute/AJ201311300046.

quell criticism of his decisions in an interview with the *Mainichi Shimbun* of Japan. He emphasized aviation safety and offered the CAA's assistance in forwarding other airlines' flight plans to Chinese authorities.¹⁷⁴ Additionally, he drew on parallels with a similar overlap of Taiwan's FIR and the Japanese ADIZ, whereby Taiwan complied with Japan's instructions to submit flight plans.¹⁷⁵ Furthermore, he added that Taiwan's military patrols in the Taiwan Strait would not be affected.

His explanation, however, was insufficient for the political opposition. The DPP conducted an opinion poll that highlighted the public's displeasure with the administration's response. An overwhelming 75.2 percent (out of the 1,338 valid responses) said that Taiwan's CAA should not have complied with China's request for flight plans, while only 15.4 percent agreed with the move.¹⁷⁶ Two harsh prominent critics also emerged to challenge Ma on his ADIZ policies. Former Taiwanese president Lee Teng-hui criticized Ma for his "one-China mindset," suggesting that it jeopardized portraying Taiwan to the international community as belonging to China. He added, "If the U.S. and Japan can [refuse to comply with China's requirements], why can't Taiwan?"¹⁷⁷ Former representative to Japan, Koh Se-kai also joined the fray, accusing Ma of abandoning Taiwan's strategy of building up the nation's military capacity and "willingly turning himself into the leader of a 'client state.'"¹⁷⁸

In sum, despite strong political backlash and the perceived muted response, the practical implications of Taiwan's response did not greatly diverge from those of South Korean and Japan. While military aircraft were prohibited from following the new rules, civilian airlines—through the ROC CAA—were instructed to file the requested flight

¹⁷⁴ Ibid.

¹⁷⁵ Shu-hua Lee and Y.L. Kao, "President Ma to Urge China Not to Designate ADIZ in South China Sea," *Central News Agency*, December 6, 2013, http://taiwandiaoyutaiislands.tw/EN/News_Detail.aspx?ID=1739.

¹⁷⁶ Chris Wang, "Public Disagrees with ADIZ Response: Poll," *Taipei Times*, December 6, 2013, <http://www.taipeitimes.com/News/taiwan/archives/2013/12/06/2003578421>.

¹⁷⁷ Hsin-fang Lee and Stacy Hsu, "ADIZ Stance Undermines Nation: Lee," *Taipei Times*, December 1, 2013, <http://www.taipeitimes.com/News/front/archives/2013/12/01/2003578043/1>.

¹⁷⁸ Ibid.

information in the interest of aviation safety.¹⁷⁹ The risk of ambiguous “defensive emergency measures” was simply too great for individual commercial carriers to directly challenge China’s ADIZ rules. Consequently, Taiwan partially acquiesced, at least from the commercial aviation perspective.

4. Vietnam

Despite the large distance between the ECS and Vietnam, the ECS ADIZ affected Southeast Asia, particularly Vietnam. After initially stating that it was “deeply concerned,” the Vietnam’s foreign ministry later tried to downplay the issue.¹⁸⁰ It urged that “all involved parties act with restraint and solve their differences through dialogues and peaceful measures, in compliance with international law.”¹⁸¹ This type of diplomatic rhetoric is common when the country encounters anything contentious. Yet beneath the diplomatic veil, the VCP was scrambling for a cohesive response. It saw a strong reaction from Japan, a tempered approach from South Korea, and a muted response from Taiwan. The ECS ADIZ did not directly affect Vietnam’s military aircraft since they have neither the capability—nor the need—to project force into the ECS. Moreover, Vietnam does not have any sovereignty claims in the ECS. Nevertheless, Vietnam had an interest in responding to the new zone; Vietnam Airlines, the national carrier, has routine flights that transit through the zone. In the end, Vietnamese commercial carriers were instructed to submit flight plans to Chinese authorities when transiting through the ECS ADIZ.¹⁸² It is not clear whether Vietnam’s military aircraft complied with the new requirements.

F. SUMMARY OF POLICY OPTIONS

The reactions from the regional countries illustrate four possible policy responses. As identified by Alex Calvo, these options include “diplomatic initiative, [multilateralism/]arbitration, a combination of civilian appeasement with military

¹⁷⁹ Brown and Scott, “China-Taiwan Relations,” 69.

¹⁸⁰ *Việt Nam News*, “VN Keeps an Eye.”

¹⁸¹ *Ibid.*

¹⁸² *Asahi Shimbun*, “More Airlines Submit.”

nonrecognition, and defiance.”¹⁸³ South Korea pursued a diplomatic initiative it hoped would disentangle it from the controversy. The government used regularly scheduled bilateral talks to quietly try to persuade the PRC officials to redraw the zone and make exemptions for South Korean aircraft. When this effort ultimately failed, the ROK was forced to make its position clearer. The expansion of ROK’s own ADIZ provided a convenient response option that appropriately messaged to China that, while not completely alienating its bilateral relationship with China, the ROK was not going to simply concede. Moreover, the manner in which it coordinated the expansion did not trigger protests from stakeholder countries.

Multilateralism/arbitration can also be advantageous in that it can stabilize the dispute and prevent further escalation. That outcome, however, would largely depend on the willingness of states to agree to the arbitration process. The Chicago Convention outlines a process for dispute resolution under articles 84–86, allowing states to bring forth issues to the ICAO council.¹⁸⁴ Japan, as well as other countries, tried to pursue the ICAO arbitration process when asked the organization to rule against the new ECS ADIZ. This is a long and arduous process, fraught with risks, and is unlikely to produce substantial positive outcome, especially when any ruling lacks sufficient enforcement mechanisms. Still, the process can act to clarify a state’s positions, and in turn, contribute to increased transparency.

Perhaps the most salient and logical policy solution is partial civilian appeasement with nonmilitary compliance. In this scenario, civilian aircraft are instructed to comply in the interest of aviation safety while military/state aircraft are ordered to reject the ADIZ rules outright. This policy, on the surface, aligns with the perspective that State aircraft are immune from coastal States’ regulation when operating in extraterritorial airspace. South Korea and Taiwan are among the countries that favored this approach. The United States, conceivably reluctantly, also followed this approach despite its strong diplomatic

¹⁸³ Alex Calvo, “China’s Air Defense Identification Zone: Concept, Issues at Stake and Regional Impact” (working paper, Naval War College, Newport, RI, 2013), 42, <http://www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA618253>.

¹⁸⁴ Calvo, “China’s Air Defense Identification Zone,” 43.

rhetoric. This pathway allows States a way to explain deference while still upholding their sovereignty claims.

Finally, a strategy of defiance is also feasible. It is the strongest of all the options and can serve to discourage China from other seemingly assertive actions. Defiance can also work to temper rising anti-Chinese sentiments within the domestic sphere as a show of solidarity with the populace. This policy, however, is not without its associated risks. For example, civilian and military aircraft could encounter additional radar queries or intercepts if they do not submit advance flight plans or identify themselves. This will unquestionably jeopardize the lives of those onboard, as it is extremely difficult to detain an aircraft in flight. Consequently, this strategy gives practical operators, whose primary concern is the safety of their passengers and aircraft, very little maneuvering space. Japan pursued a policy to sharply criticize and completely defy the rules; its domestic carriers and military were ordered to not submit flight plans to Chinese authorities. These actions underscore the mutual suspicion and military competition in the region.

G. CONCLUSION

The ECS ADIZ definitely surprised the international community. While there has been no singular event that harkens to the U.S. Navy's EP-3 incident in 2001, increasing intercepts between Japanese and Chinese aircraft could ignite tensions in the region. As China steps up its construction work on the reclaimed islands, thereby enabling civil and military aircraft to operate, it will soon have the capability to enforce a similar zone in the South China Sea, with its own rules and regulations. These aspects will undoubtedly alter the dynamics of the South China Sea as sovereignty disputes among more countries come into play. Vietnam will be forced to choose a policy response similar to, or in combination with, those observed during and after the November 23, 2013, announcement. Whatever pathway it chooses will largely depend on Vietnam's leadership and the way it interprets China's actions in the larger context of sovereignty claims in the South China Sea. The next chapter explores Vietnam's foreign policy and how the country resolves border and maritime disputes.

V. VIETNAM'S TERRITORIAL DISPUTES AND RESOLUTIONS

In the four decades since reunification, Vietnam has had to face numerous territorial challenges from China, not so dissimilar from a hypothetical SCS ADIZ. Starting with the countries' brief border war in February 1979, these territorial disputes—often resulting in brief skirmishes—continued throughout the 1980s and well into the present day. The legacies of these conflicts, along with a long problematic history, have fueled tensions and mistrust between China and Vietnam. Nevertheless, since normalization of relations between the two neighbors in 1991, much progress has been made to peacefully resolve land and maritime disputes; this progress will be discussed as a model for successful conflict resolution. Still, issues between China and Vietnam involving the South China Sea remain much more complex and contentious.

The responses from Japan, South Korea, and Taiwan during the ECS ADIZ crisis highlight challenges Vietnam is likely to face when confronting China over the South China Sea. For example, in the case of Japan, nationalist elements within Japan used overlapping ADIZ zones over the Senkaku/Diaoyu Islands as evidence of China's territorial assertions. These nationalist elements, in pressuring the government to strongly respond, have complicated the disputes and made it harder for Japan's leadership to accept the China's new ADIZ. Similarly, Vietnam's SCS disputes over the Paracel and the Spratly Islands contain analogous elements of nationalism; anti-Chinese sentiments, which have been steadily building over the last decade, have frequently strained bilateral relationships and aggravated tensions. In the case of South Korea, the country quietly requested China redraw the ECS ADIZ, but China did not comply—underscoring the complexity of bilateral negotiations, which do not always achieve the desired outcome. Vietnam has had to factor diplomatic failure into its policy calculus when party-to-party talks fail. As for Taiwan's muted response, it parallels Vietnam's political tightrope walk with China. On the one hand, Vietnam's continued economic progress is integrally linked to China's and depends on China's goodwill. On the other hand, there are real negative political consequences for Vietnamese leadership if the VCP appears to acquiesce to China in respect to issues involving the South China Sea. In light of these numerous

challenges, Vietnam has had to employ a multilayered strategy to address Chinese territorial assertions. This chapter reviews Vietnam's key foreign policy actors, institutions, and interests. It then traces recent Sino-Vietnamese territorial disputes and identifies common challenges Vietnam is likely to face from a South China Sea dispute. It then maps the three key strategies Vietnam has employed in managing the South China Sea dispute with China.

A. KEY ACTORS, INSTITUTIONS, AND INTERESTS

1. Vietnamese Communist Party

Since independence and reunification in 1975, the VCP has been the single most dominant actor driving Vietnam's foreign policy. In that regard, the VCP's centralized control of political, economic, and social institutions reaches deep into Vietnamese society. At the very top of the political structure is the party leader—the general secretary—who is elected by the 16-member Politburo, a subunit of the Central Committee. The Politburo also nominates party leaders to the posts of president and prime minister. While the president's position is largely ceremonial, the prime minister runs the country's daily operations. The National Assembly, or legislative body, is seen as a rubber-stamping institution that passes the party's policies without much disagreement. In the last decade, however, the National Assembly has had some success in asserting more political influence. Consequently, the chairman of the National Assembly holds considerable power. Together, the general secretary, the prime minister, the president, and the chairman of the National Assembly form the core of the policymaking body.

While the single-party system reduces the potential for policy discord, internal disagreements as to the direction of Vietnam's policy toward China have often surfaced. Competition between three primary blocs of power within the VCP reveals Vietnam's multiple foreign policy pathways toward China. These blocs include conservatives, modernizers, and opportunists in the political middle.¹⁸⁵ In general, conservatives favor

¹⁸⁵ Vuving, "Tale of Four Players," 368. Note: Vuving uses the term "rent seekers" to describe the third bloc.

closer ties with China, while modernizers prefer economic development and diversification away from China.¹⁸⁶ The opportunists do not have strong policy preferences but will side with either conservatives or modernizers when their domestic interests align. These blocs directly impact Vietnam's foreign policy toward China. According to Alexander Vuving, in line with conservatives' views, Vietnam continues to maintain a close relationship with China through a series of exchanges based on shared communist ideology.¹⁸⁷ On the other hand, modernizers have pushed for a strategy of self-help and balancing against China.¹⁸⁸

2. Vietnam's Leadership

Vietnam's political leadership is a critical component of its foreign policy vis-à-vis China. That leadership has largely been a mixture of regime conservatives, modernizers, and those in the political middle.¹⁸⁹ Before the January 2016 National Congress, the country's top three positions were held by General Secretary Nguyen Phu Trong, Prime Minister Nguyen Tan Dung, and President Truong Tan Sang. Often viewed as an ideological conservative and part of the old guard from northern Vietnam, Trong has been identified as being pro-China.¹⁹⁰ Conversely, the younger southerner Dung is regarded as a modernizer and reformist, favoring a stronger anti-China position.¹⁹¹ As for Sang, it is unclear which policy direction he supports.

In January 2016, the Twelfth National Congress met to elect the VCP leadership and adopt key policy documents for the next five years. Also at stake was the top post of general secretary. The two leading candidates were the current prime minister, Dung, and the incumbent, Trong. Speculations that the more charismatic, Western-educated Dung would secure the leadership mantle from Trong, however, were short-lived; on January 27, the National Congress reelected the 71-year-old Trong to a second term, cementing

¹⁸⁶ Vuving, "Tale of Four Players," 368.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid., 385.

¹⁸⁹ Ibid., 368.

¹⁹⁰ *BBC Asia*, "Vietnam Profile: Leaders."

¹⁹¹ Ibid.

his hold on power. The current deputy prime minister, Nguyen Xuan Phuc, is expected to replace Dung as prime minister.

While the full implications of the election have not been completely realized, the reelection of Trong to the VCP's top leadership position may signal a regression from earlier reforms and possibly drive Vietnam closer to China.¹⁹² Indeed, some observers fear that amid stagnant economic growth in recent years, a conservative trend would threaten the economic reforms spearheaded by Dung. Others, like Le Hong Hiep, a fellow at the Institute of Southeast Asia Studies, have argued, "Many people were afraid that a conservative trend would prevail if Mr. Trong is re-elected. But . . . whoever they may be, and however conservative they may be, when they are at the helm they are under pressure to carry out reforms."¹⁹³ Certainly, rising anti-China sentiments in Vietnam fueled by incidents such as the HD-981 oil rig incident in 2014—which triggered massive protests throughout the country—will pressure the government to respond strongly to China's assertiveness in the South China Sea. Therefore, despite his reputation as being pro-China, Trong is likely to continue advancing Dung's economic reforms and to push back against China.¹⁹⁴ Furthermore, many Vietnam observers believe Trong will relinquish power before the end of his full term to another less conservative leader as a concession to the modernizer bloc.¹⁹⁵

3. Vietnam People's Army

As a special arm of the VCP, the Vietnam People's Army is a powerful instrument of Vietnam's foreign policy. Not only has it been tasked with defending the country against external threats, but it has also assumed major roles in domestic security, economic development, and politics.¹⁹⁶ As such, its senior leadership is often dual-hatted, serving as both Politburo members and senior military officers. For example, the highest-

¹⁹² "Vietnam Ruling Party Boss Re-Elected, Cements Hold on Power," *Associated Press*, January 27, 2016, <http://townhall.com/news/politics-elections/2016/01/27/vietnam-communist-party-chief-poised-to-be-re-elected-n2110573>.

¹⁹³ Ibid. Quoting Hiep.

¹⁹⁴ Radio Free Asia, "Vietnam Stays The Course in 2016."

¹⁹⁵ Ibid.

¹⁹⁶ Thayer, "Political Role of the Vietnam People's Army," 23.

ranking VPA officer serves as both defense minister and a cabinet member.¹⁹⁷ Furthermore, military officers also occupy seats in the National Assembly in addition to their military duties. On the national security front, the VPA has been engaged in modernization efforts to professionalize its forces and acquire updated military hardware to counter the maritime threats in the South China Sea.¹⁹⁸ More narrowly, the VPA was one of the actors pushing for the 2010 decision to open Cam Ranh Port to noncombat vessels from foreign navies.¹⁹⁹

The VPA also acts as a domestic security force and operates its own commercial enterprises. For example, throughout the early 2000s, it has engaged in limited deployments to the Central Highlands to suppress ethnic unrest in the region.²⁰⁰ On the commercial side, the VPA owns and operates several highly profitable state-owned enterprises that generate a large portion of its income (e.g., Viettel).²⁰¹ In short, while the VPA is still subservient to the politics of the VCP, its position within the VCP's policymaking body affords it an influential role in advancing self-help and balancing strategies.

To summarize, the VCP's primary interest is regime security. From its perspective, regime security equates to state security. Ever since the economic disaster of collectivization in the late 1970s and the following decade-long occupation of Cambodia that threatened the party's legitimacy, the VCP's primary foreign policy interest has been the pursuit of *Doi Moi* "Renovations" policies aimed at economic reforms and openness. Toward that end, the VCP has sought to "peacefully coexist with China, the Association of Southeast Asian Nations, and the United States and to help turn Southeast Asia into a

¹⁹⁷ Thayer, "Political Role of the Vietnam People's Army," 23.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid., 12.

¹⁹⁹ Claire Mai Colberg, "Catching Fish with Two Hands: Vietnam's Hedging Strategy towards China" (masters thesis, Stanford University, 2014), 87.

²⁰⁰ Thayer, "Political Role of the Vietnam People's Army," 13.

²⁰¹ Ibid., 17.

region of peace, stability, and cooperation.”²⁰² With economic reforms and normalization of relations with the international community, the policy has spurred unprecedented economic growth over the last few decades. Much of that growth has been a product of relative stability in the country and the region. Border disputes with China—if left unresolved—have the potential to evolve into a greater security threat, which can negatively impact Vietnam’s sovereignty and stability.²⁰³ Hence, there has been a concerted effort from the VCP to address those concerns.

B. PAST TERRITORIAL CHALLENGES AND RESPONSES

While fear continues that China will soon declare an ADIZ over the South China Sea, by tracing how Vietnam has responded to similar past territorial challenges from China, we can identify key challenges and, just as important, the strategies Vietnam is likely to employ. Overall, Sino-Vietnamese relations have been plagued by historical legacies that make it highly vulnerable to tensions primarily driven by border disputes.²⁰⁴ While it is beyond the scope of this chapter to completely trace this legacy, it is necessary to highlight Vietnam’s recent territorial challenges—namely the land border, Gulf of Tonkin, and South China Sea disputes. These disputes highlight that peaceful resolutions are possible if contentious issues can be delinked from more complex ones and in the process establish a dense network that can help alleviate tensions between the two countries.

1. Land Border Disputes

Following the end of the Vietnam War, Vietnam’s border dispute with China resulted in an all-out war. China invaded Vietnam in February 1979 but withdrew its forces twenty-nine days later in March 1979. Although the two sides attempted negotiations several times between April 1979 and March 1980, no agreement emerged.

²⁰² Le Hong Hiep, “Vietnam’s Domestic–Foreign Policy Nexus: *Doi Moi*, Foreign Policy Reform, and Sino-Vietnamese Normalization,” *Asian Politics & Policy* 5, no. 3 (July 2013): 393. doi: 10.1111/aspp.12035.

²⁰³ Amer and Nguyen, “Management of Vietnam’s Border Disputes,” 439.

²⁰⁴ Ramses Amer, “Sino-Vietnamese Border Disputes,” in *Beijing’s Power and China’s Borders: Twenty Neighbors in Asia*, ed. Bruce A. Elleman, Stephen Kotkin, and Clive Schofield (London: Sharpe, 2012), 297.

This uneasy peace produced frequent accusations of military incursions from both sides. According to Ramses Amer, “Bilateral relations remained tense during these talks and for most of the 1980s. Friction [was] most visible among the border.”²⁰⁵ Consequently, the dispute endured throughout the 1980s and well into the 1990s.

Progress on a resolution could not be made until Vietnam normalized relations with China in 1991. Before that could happen, however, the groundwork for normalization had to be established. Beginning in the mid-1980s, low-level contacts began to lead to high-level meetings in early 1989, which, in turn, resulted in diplomatic detente by mid-1991. In November 1991, bilateral relations were fully normalized. Still, the border disputes remained unresolved because negotiators and leadership set them aside because they were too contentious. As Amer cites, “If a resolution of the border disputes had been a precondition for full normalization of bilateral relations, the later would not have been possible in 1991.”²⁰⁶ By delinking the more contentious issues, negotiators were able to find common grounds to normalize relations.

Once full normalization occurred, resolution of the border dispute began to take shape through a system of highly structured talks and discussions. These talks can be characterized as expert level; government level; Foreign Ministry level; and high level.²⁰⁷ Expert-level talks began shortly after normalization in October 1992; the following year, both countries inked a preliminary agreement on the principles for handling the land border and Gulf of Tonkin disputes. During that process, the two countries agreed to establish expert-level working groups to address the broad array of issues related to the disputes. Subsequently, 16 rounds of talks were held between February 1994 and December 1999.²⁰⁸ The frequency and duration of these working group meetings intensified as talks progressed; in the year leading up to the final agreement, the working group met on four occasions, with talks often lasting longer than two weeks.²⁰⁹ On

²⁰⁵ Amer, “Sino-Vietnamese Border Disputes,” 296.

²⁰⁶ Ibid.

²⁰⁷ Amer, “China, Vietnam, and the South China Sea,” 18.

²⁰⁸ Amer, “Sino-Vietnamese Border Disputes,” 297.

²⁰⁹ Amer, “Sino-Vietnamese Border Disputes,” 299.

December 30, 1999, Vietnam and China signed the Land Border Treaty. Shortly afterwards, both countries' legislatures ratified the treaty.

Following ratification, the difficult task of physically demarcating the border became apparent. The treaty, as published by Vietnam in 2002, did not include any accompanying maps. Again, in 2002, China and Vietnam established a joint committee on the demarcation process to map out a plan to plant landmarks along the border. The long process was complete in 2008—marking an end to the land border dispute.

2. Gulf of Tonkin Disputes

The Land Border Treaty negotiation framework was also successfully employed to resolve the Gulf of Tonkin dispute. Bach Long Vi Island, an island that China had occupied before transferring control to Vietnam in 1957, had long been a major point of contention. At the core of the dispute were Bach Long Vi's EEZ and continental shelf entitlements. Vietnam's position was that the island's entitlements should be fully included in any agreement to divide the Gulf of Tonkin. Conversely, China's interest was to minimize the impact of the island to limit Vietnam's claims. After an initial agreement in October 1993 to outline the steps for handling the Gulf of Tonkin dispute, Vietnam and China established joint working groups at the expert-level to begin working the negotiations. Similar to the land border negotiations, a series of over 18 working group meetings between March 1994 and December 2000 finally produced an agreement to share the Gulf of Tonkin.²¹⁰

Running parallel to these expert-level meetings were high-level meetings between the two countries' general secretaries. In July 1997, during an official visit by VCP general secretary Do Muoi to China, he promised "to try to conclude the treaty . . . on maritime delineation in the Tonkin Gulf before the end of 2000."²¹¹ Again, in 1999, both countries' general secretaries, Le Kha Phieu and Jiang Zemin, issued a joint statement:

²¹⁰ Thao Hong Nguyen, "Maritime Delimitation and Fishery Cooperation in the Tonkin Gulf." *Ocean Development & International Law* 36, no. 1 (2005): 28, doi: 10.1080/00908320590904939.

²¹¹ Nguyen, "Maritime Delimitation," 27.

The two sides agree to place the primary issues foremost, show sympathy and compromise with each other, conduct fair, rational and friendly consultations, and taking into account international law and reality, try to satisfactorily settle the outstanding territorial and border issues between the two countries through peaceful negotiations. The two sides express their determination to accelerate the process of negotiations and raise their working efficiency for the concluding the treaty on land border in 1999; to complete settlement of the maritime delineation of the Tonkin Gulf in 2000; and to join efforts in making their common borderline one of peace, friendship and stability.²¹²

Before an agreement could be reached, however, the issue of fishing rights also had to be addressed. Separate but parallel working groups held six rounds of discussions between April and December 2000 to discuss how to designate joint fishing areas.²¹³ Overall, according to a Vietnam scholar, between 1993 and 2000:

The two sides held seven rounds of negotiation at the governmental level, three nonofficial meetings of the two heads of the governmental delegations on the territorial and boundary issues, eighteen rounds of negotiations of the mixed working groups, nine nonofficial meetings of Groups of Legal and Technical Experts, and ten rounds of Groups of Experts making the General Nautical Chart of the Gulf.²¹⁴

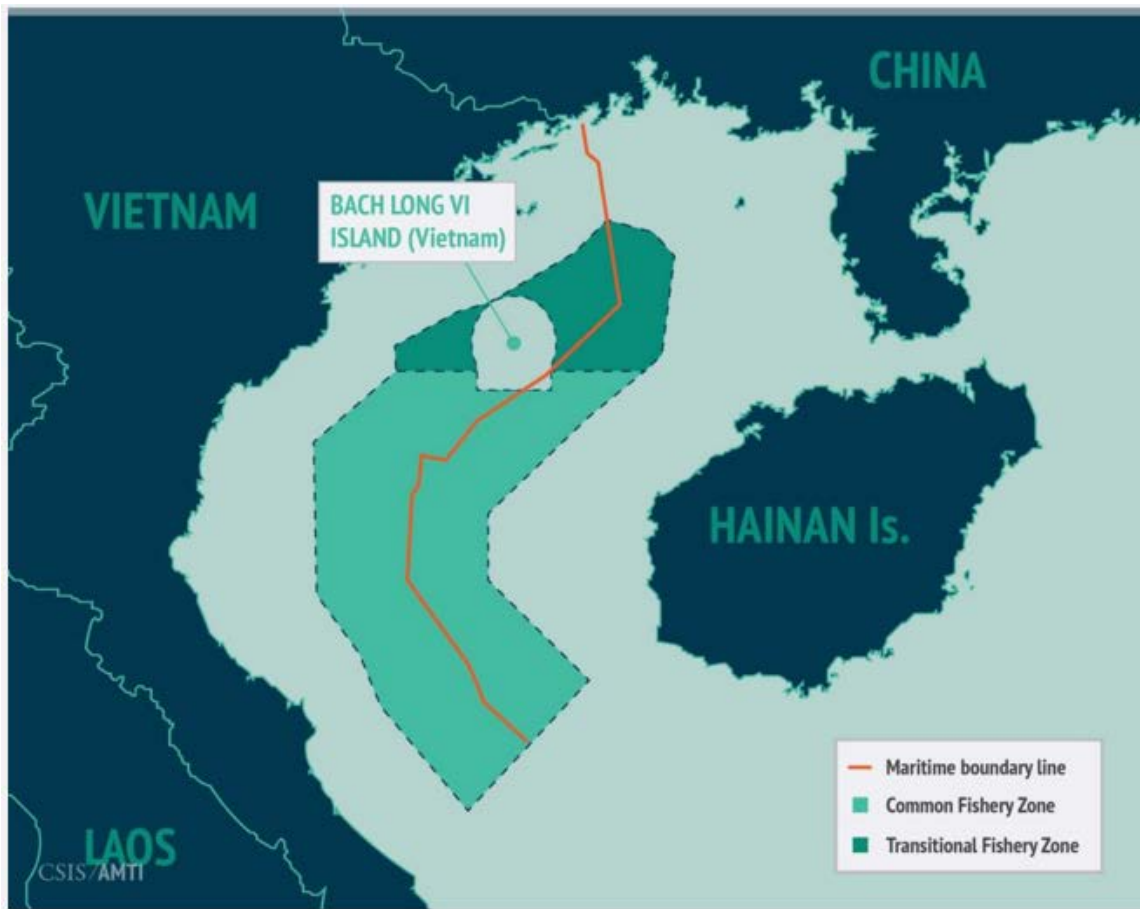
On December 25, 2000, Vietnam and China signed the Agreement on the Delimitation of Waters, EEZ and Continental Shelves in the Gulf of Tonkin (Delimitation Agreement) and the Agreement on Fishing Cooperation in the Gulf of Tonkin (Fishing Agreement). Figure 3 summarizes the boundaries of the agreement.

²¹² Ibid.

²¹³ Amer, "Sino-Vietnamese Border Disputes," 303.

²¹⁴ Nguyen, "Maritime Delimitation," 28.

Figure 3. Gulf of Tonkin Boundary Agreement



Source: “The Evolution of Asia’s Contested Waters,” Asia Maritime Transparency Initiative, accessed February 28, 2016, <http://amti.csis.org/maritime-disputes/>.

The terms of the agreement outlined a series of coordinates that ultimately limited EEZs rights by drawing a line of equidistance. Vietnam obtained 53.23 percent while China received 46.77 percent; additionally, Bach Long Vi was only given a 15 nautical mile limit instead of the standard 200 nautical mile EEZ entitlement.²¹⁵

Overall, the Land Border Treaty and Gulf of Tonkin negotiations underscore a common challenge for Vietnam—the task of delinking the current dispute from more complex disputes. During the course of the land border negotiations, the land border disputes were initially separated from the normalization discussions. Once normalization was accomplished, further progress could then be made on the land border negotiations.

²¹⁵ Amer, “Sino-Vietnamese Border Disputes,” 301.

During the Gulf of Tonkin discussions, both China and Vietnam had to agree to the exact location of the “mouth” of the Gulf of Tonkin. This effort, as well as setting aside contentious issues such as oil and natural gas rights, made it possible to separate the Gulf of Tonkin from the larger SCS debate. Thao Hong Nguyen observes that the delimitation of the Gulf of Tonkin did not “affect or prejudice the position of either state regarding other ocean matters.”²¹⁶ As demonstrated, resolution may be possible if both parties can agree to set aside contentious issues and focus on their mutual interests.

Still, what happens when delinking is not possible? When South Korea attempted to delink China’s ECS ADIZ from the Ieodo/Suyan Rock dispute, it was unable to do so. Vietnam also recognizes delinking is not always feasible and negotiations may have to take a different path. Its strategies toward China, as we will discuss later, reflect this reality.

3. South China Sea Disputes

While the land border and Gulf of Tonkin disputes with China have been largely resolved, the South China Sea dispute is more complex and remains the principal strain on bilateral relations with China. With China’s mounting economic and military strength in the region, China has been very assertive over its claims of the Paracel and Spratly island chains in the South China Sea. The core of the dispute centers on overlapping territorial claims between China and other claimants in the region (Brunei, Malaysia, the Philippines, and Taiwan), and disputes have spilled over onto issues such as fishing rights and oil exploration. Vietnam claims that the islands are within its UNCLOS EEZ and that it is entitled to varying rights. China, however, claims that the islands—based on historical maps—are within its nine-dash line and are subsequently within its sovereign territory and jurisdiction. Furthermore, Chinese land reclamation projects on the reefs of the Paracel and Spratly Islands have exacerbated tensions between multiple claimants.

²¹⁶ Nguyen, “Maritime Delimitation,” 29.

C. KEY CHALLENGES AND STRATEGIES

Domestic and international pressures have further complicated the South China Sea disputes. In Vietnam, as in Japan, a broad and very vocal anti-Chinese citizenry have emerged and started to exert pressure on leadership, making resolving disputes more difficult. Additionally, geopolitical pressures from the United States have created unique challenges for Vietnam, forcing the VCP to carefully calibrate its growing relationship. Consequently, if China imposes an SCS ADIZ, Vietnam is likely to face similar domestic and geopolitical challenges.

1. Anti-Chinese Sentiments

Similar to Japan with its growing nationalist sentiment, Vietnam has had to carefully manage rising anti-Chinese sentiment within the country. Since 2005, this sentiment has been building and continues to regularly interrupt bilateral relations with China. For example, in January 2005, Chinese maritime patrols killed nine fishermen and arrested several others in the Gulf of Tonkin for violating China's annual unilateral-imposed fishing ban (May 16–August 1).²¹⁷ This event went unreported for six days and did not elicit a government response until a local newspaper published the news.²¹⁸ After the news broke, the Vietnamese government lodged a diplomatic protest against China. The incident also sparked anti-China protests from overseas Vietnamese graduate students who mobilized to demonstrate against China's "brutalities" and to express solidarity with fellow Vietnamese.²¹⁹

Vietnam's mainstream elites have also exerted similar pressures on the VCP. These elites include prominent high-ranking retired military officers, academics, lawyers, and other professionals.²²⁰ General Vo Nguyen Giap—the nationally revered hero of Vietnamese independence—was one of the notable voices who led a public movement in January 2009 against a joint Sino-Vietnamese bauxite development plan that called for a

²¹⁷ Tuong Vu, "The Party v. the People: Anti-China Nationalism in Contemporary Vietnam," *Journal of Vietnamese Studies* 9, no. 4 (fall 2014): 41, doi: 10.1525/vs.2014.9.4.33.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid., 41.

large influx of Chinese workers into Vietnam's Central Highlands. He accused the VCP leadership of failing to consider the national security implications of such a flood of workers.²²¹

Between 2007 and 2010, sporadic public protests have ensued as a result of China's actions involving the South China Sea. In December 2007, a series of student-led street protests that organized through social media, blogs, and text messaging erupted when China announced plans to create an administrative region to manage the disputed Paracel and Spratly island chains.²²² Again, between June 2009 and September 2010 multiple protests followed when Vietnamese news reported that China was impounding and detaining Vietnamese fishing boats and crewmembers.²²³

In May 2014, tensions reached an inflection point when China deployed a floating oil exploratory rig (HD-981) into Vietnam's EEZ to drill near the disputed Paracel Islands. Escorted by a PLAN contingent and coast guard ships, the rig set out to drill from May to August 2014. Altercations between Vietnamese civilian fishing ships and the Chinese flotilla protecting the rig ensued and eventually resulted in the sinking of a Vietnamese vessel. The actions not only sparked a diplomatic protest from Vietnam but also incited widespread anti-China riots throughout the country. Several Chinese citizens were killed and numerous businesses, including Taiwanese, South Korean, and Japanese factories, were destroyed—forcing China to evacuate its citizens from Vietnam and withdraw the rig in July, one month earlier than publicly announced.

While so far the VCP has been mostly successful at containing nationalist sentiments through its domestic security apparatus and the VPA, these sentiments continue to pose a special challenge for Vietnamese leadership. Similar to Taiwan's responses during the Chinese ECS ADIZ, Vietnamese leadership has had to walk a fine line between supporting nationalist sentiments and provoking its larger neighbor, China. Consequently, Vietnam, like Taiwan, has had to carefully calibrate its response to

²²¹ Vu, "The Party v. the People," 41.

²²² Alexander L. Vuving, "Vietnam: Arriving in the World — and at a Crossroads," *Southeast Asian Affairs* (2008): 389, <http://www.jstor.org/stable/27913368> 389.

²²³ Thayer, "The Tyranny of Geography," 357.

maintain its close relationship with China, while appearing to placate and support its domestic nationalist elements.

2. Foreign Relations

Japan's response to China's ECS ADIZ highlights another key challenge—its relations with the United States. While Japan relies heavily on the U.S.-Japan alliance to defend its territory, the relationship between Vietnam and the United States is more delicate. Managing this delicate relationship is one of the key challenges involving issues related to the South China Sea.

As China's near-peer rival, the United States is in the best position to help Vietnam balance against China. Since normalization in 1995, Vietnam-U.S. relations have dramatically improved as the countries' interests have slowly converged. Economically, the United States has become Vietnam's largest trading partner, with annual exports totaling over \$24.5 billion.²²⁴ Vietnam is also poised to gain significant access to markets as the Trans-Pacific Partnership advances toward complete ratification. Along the same lines, political and military ties have also strengthened. High-level visits by former president Bush in 2006 and secretary of state John Kerry in 2013 have emphasized the United States' desire to advance the relationship.²²⁵ More recently, when General Secretary Trong visited Washington in July 2015, he signed the agreement to upgrade the relationship from a "strategic partnership" to a higher "comprehensive partnership." President Obama is set to reciprocate with a visit to Vietnam in May 2016. Military-military ties also have extended beyond joint POW/MIA accounting to now include naval port visits and humanitarian assistance and disaster relief cooperation. While these are modest improvements, Vietnam's decision to open Cam Ranh Port to all navies is viewed as an indirect invitation for more U.S. naval presence in the region.²²⁶

²²⁴ "Vietnam," Observatory of Economic Complexity, accessed February 24, 2016, <http://atlas.media.mit.edu/en/profile/country/vnm/>.

²²⁵ Le Hong Hiep, "Vietnam's Strategic Trajectory: From Internal Development to External Engagement," *ASPI Strategic Insights* no. 59 (2012): 7, https://www.aspi.org.au/publications/strategic-insights-59-vietnams-strategic-trajectory-from-internal-development-to-external-engagement/SI59_Vietnam.pdf.

²²⁶ Hiep, "Vietnam's Strategic Trajectory," 11.

Nevertheless, despite the acceleration in ties, there is a general reluctance among conservative Vietnamese leadership to deepen the relationship with the United States.²²⁷ Legacies such as the Vietnam War and the VCP's suspicion of U.S. encroachment on regime security remain obstacles to a closer relationship.²²⁸ Moving closer to the United States is also politically risky and may invite unintended consequences from China. Along the same lines, there is also the fear of overreliance on foreign powers. For example, in March 1988, when China moved to militarily take over Johnson Reef in the Spratlys from Vietnam, an action that resulted in seventy-four Vietnamese casualties, the Soviet Union—Vietnam's principle supporter at the time—did not dispatch its warships from Cam Ranh Bay to assist.²²⁹ This inaction left a deep mark on Vietnamese leadership and may have helped shaped Vietnam's decision to acquire its own military capabilities.

3. Key Strategies

To address challenges related to the South China Sea, Vietnam has turned to a mixture of strategies that include bilateral party-to-party talks, multilateralization, and self-help/balancing.²³⁰ Party-to-party relations, developed and sustained through the Land Border Treaty and Delimitation Agreement negotiations, remain fundamental to Vietnam's overall strategy and have been historically successful in reducing tension. Early on, expert-level talks in 1995 began to institutionalize a conflict management mechanism.²³¹ Between 1998 and 2001, both countries restrained from accusations in connection with incidents relating to the SCS.²³² This reluctance, however, did not necessarily mean the two countries were unwilling to voice their displeasure. Indeed, Vietnam lodged a diplomatic protest in March 1999 when China declared a temporary

²²⁷ Ramses Amer, "Vietnam in 2014: Crisis with China Makes Headlines," in *Southeast Asian Affairs 2015*, ed. Daljit Singh (Singapore: Institute of Southeast Asian Studies, 2015), 395.

²²⁸ Hiep, "Vietnam's Strategic Trajectory," 7.

²²⁹ Dmitry Mosyakov, "Policy of the Soviet Union – Russia in Asia Pacific and in the Conflict over the Islands of the South China Sea," *New Eastern Outlook*, October 29, 2012, <http://journal-neo.org/2012/10/29/policy-of-the-soviet-union-russia-in-asia-pacific-and-in-the-conflict-over-the-islands-of-the-south-china-sea/>.

²³⁰ Thayer, "Tyranny of Geography," 363.

²³¹ Amer, "Sino-Vietnamese Border Disputes," 303.

²³² *Ibid.*, 304.

fishing ban in the SCS. Still, the period saw mutual restraint from both countries as they worked toward resolving the other less contentious land border and Gulf of Tonkin disputes.

During the early 2000s, in the process of negotiating the Land Border Treaty and Delimitation Agreement, a deep network of close party-to-party relationships formed, enabling “regularly schedule[d] exchange[s] by state presidents, prime ministers/premiers, and minister level delegations.”²³³ Because Vietnam considers these exchanges as critical components of its conflict management strategy, it has created a Joint Steering Committee to carefully manage these relationships.²³⁴ Between 2001 and 2008, these exchanges helped facilitate a period of relatively stable relations between the two countries. According to Amer, despite short periods of tension associated with fishing bans and resource exploration, Sino-Vietnamese relations regarding the South China remained stable.²³⁵

Between 2009 and 2013, as tensions began to mount, party-to-party talks were critical in alleviating some of the pressures. For example, after numerous arrests of Vietnamese fishermen between May 2009 and August 2010, the two countries’ prime ministers met in Hanoi in late October 2010 and “agreed to seek satisfactory resolutions of existing issues relating the South China Sea.”²³⁶ As Amer observed, the arrests stopped after this meeting.²³⁷ After a short period of calm, tensions again flared in 2011 when a Chinese fishing boat severed a sensitive cable from a PetroVietnam survey vessel. Still, high-level talks managed alleviate tensions by late June 2011.²³⁸ By October 2011, high-level summits between the two countries concluded in an Agreement on Basic

²³³ Thayer, “Tyranny of Geography,” 363.

²³⁴ Ibid.,

²³⁵ Amer, “China, Vietnam, and the South China Sea,” 20.

²³⁶ Amer, “Sino-Vietnamese Border Disputes,” 305.

²³⁷ Ibid.

²³⁸ Amer, “Sino-Vietnamese Border Disputes,” 305.

Principles, which, according to Amer, represented a “de facto bilateral code of conduct.”²³⁹

Despite its extensive network of party-to-party relationships, Vietnam has also opted to pursue a strategy of multilateralization because of its relatively weaker position with respect to China. Multilateralizing also affords Vietnam the ability to reframe the issue and ally with other nations who share similar interests against a larger rival. Vietnam sees ASEAN and other regional institutions as critical to forwarding this strategy. For example, Vietnam, along with ASEAN, adopted the nonbinding declaration on the conduct of parties in the South China Sea (DoC) in 2002. In 2009, Vietnam and Malaysia jointly submitted to the Commission on the Limits of the Continental Shelf to define the limits of coastal states’ continental shelves. In 2010, Vietnam used its ASEAN chairmanship to put the SCS on the agenda at the annual meetings. As Thayer notes:

Vietnam’s [strategy] is to promote multilateral efforts to enmesh China in a web of cooperative relations. Vietnam utilizes regional institutions such as the Association of Southeast Asian Nations (ASEAN), the ASEAN Regional Forum, ASEAN Plus Three, ASEAN Defence Ministers Meeting-Plus (ADMM-Plus) and the East Asia Summit. During 2010, Vietnam used its position as Chair of ASEAN to internationalize the South China Sea issue and resume sessions of the ASEAN-China Joint Working Group to implement the 2002 Declaration on Conduct of Parties in the South China Sea (DoC).²⁴⁰

Yet, not all ASEAN countries share Vietnam’s strong position against China. Malaysia, who chaired ASEAN in 2015, tempered its official language regarding the South China Sea disputes, despite demands from the Philippines to take a tougher stance. That aside, progress has been slow in the negotiations and implementation of a South China Sea Code of Conduct as China has little incentive to finalize an agreement with ASEAN.²⁴¹

Consequently, while diplomacy and negotiations play out, Vietnam is also embarking on a series of self-help and balancing initiatives mirroring Japan’s effort to

²³⁹ Amer, “China, Vietnam, and the South China Sea,” 28.

²⁴⁰ Thayer, “Tyranny of Geography,” 352.

²⁴¹ Carlyle A. Thayer, “ASEAN, China and the Code of Conduct in the South China Sea,” *SAIS Review*, 33 no. 2 (2013), 82.

normalize and expand the role of its Self-Defense Force. While its defense budget is nowhere near the scale of Japan's budget, Vietnam is, nevertheless, seeking to bolster its military capabilities to counter the Chinese threat by modernizing and professionalizing its forces. According to a recent Stockholm International Peace Research Institute (SIPRI) report, Vietnam currently ranks eighth in global arms imports; in 2014, its military expenditures totaled approximately \$4.42 billion.²⁴² Vietnam's purchase of Russian submarines is seen as a defensive strategy aimed at area denial, making it costly for militarily superior rivals to directly engage Vietnamese forces.²⁴³ As it takes delivery of its sixth and final kilo-class submarines, the VPA is also upgrading its air defense capabilities. The VPA ordered 12 additional SU-30 fighters from Russia in 2013, with the Indian Air Force providing flight training.²⁴⁴ More recently, the VPA has announced plans to purchase Israeli radar and antiaircraft missile systems to shore up its coastal defense.²⁴⁵

D. CONCLUSION

Land border and maritime disputes have been the primary drivers of tensions between Vietnam and China. Yet Vietnam successfully and peacefully resolved some of these disputes through a system of talks aimed at diffusing tensions and advancing common interests. Initiated shortly after normalizing relations with China in 1991, multilevel talks—ranging from expert-level to high-level talks—have helped end the land border and Gulf of Tonkin disagreements by delinking contentious issues. These talks have fascinated a dense network of close party-to-party relationships that remains critical to diffusing tensions elsewhere.

Resolution of more contentious disputes in the South China Sea, however, continues to be much more elusive as domestic and geopolitical factors come into play.

²⁴²“SIPRI Military Expenditure Database,” Stockholm International Peace Research Institute, accessed March 10, 2016, http://www.sipri.org/research/armaments/milex/research/armaments/milex/research/armaments/milex/milex_database.

²⁴³ Thayer, “Tyranny of Geography,” 352.

²⁴⁴ *Defense Industry Daily*, “Vietnam's Russian Restocking.”

²⁴⁵ “Vietnam Buys Israeli-Made Air Defense Missile System, Radar,” *Tuoi Tre News*, October 30, 2015, <http://tuoitrenews.vn/politics/31293/vietnam-buys-israelimade-air-defense-missile-system-radar>.

Anti-Chinese sentiments have often undermined bilateral talks and escalated tensions. Additionally, relations with major powers, especially the United States, bear both upside and downside risks. In light of these challenges, Vietnam has had to complement its party-to-party talks by multilateralizing and growing its self-help capabilities. Should an SCS ADIZ become a reality, Vietnam is likely to tailor all—or parts—of these strategies when it confronts China.

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VI. ANALYSIS AND CONCLUDING THOUGHTS

When China unilaterally declared its ECS ADIZ in November 2013, the event ignited an international debate surrounding ADIZs and prompted various responses from Japan, South Korea, and Taiwan. Japan, along with the United States and other nations, accused China of attempting to alter the status quo and escalating tensions in the region. China, however, defended its position by claiming it was within its rights to establish such a zone. While some countries complied with China's ECS ADIZ procedures, others have partly or completely disregarded them. Furthermore, China's ECS ADIZ has sparked fears among scholars and policymakers that a similar zone might be implemented over the SCS. Vietnam, as a coastal neighbor of China, would be the country most affected by a Chinese SCS ADIZ. How would Vietnam respond to such a declaration of an ADIZ in the region?

A review of the international legal regime reveals that while international law does not expressly prohibit the establishment of ADIZs, it lacks specific rules and procedures, leaving key national security issues such as airspace sovereignty over EEZs and the treatment of state aircraft largely unresolved. As a result, states have unilaterally established their own ADIZ procedures and practices; these approaches often conflict with each other, leading to further friction over China's ECS ADIZ.

Nevertheless, an examination of the responses from Japan, South Korea, and Taiwan during the ECS ADIZ crisis has yielded several policy choices for Vietnam. These options include bilateral diplomacy, multilateralization/arbitration, complete defiance, and a mixture of civilian acquiescence with military noncompliance.²⁴⁶ While these options are not mutually exclusive, Vietnam will likely apply them in a manner consistent with its current multilayered strategy of party-to-party talks, multilateralization, and self-help initiatives.

Consequently, Vietnam's response to a Chinese ADIZ in the SCS will depend not only on the VCP's leadership preferences, but also on Vietnam's domestic and

²⁴⁶ Calvo, "China's Air Defense Identification Zone," 42.

geopolitical calculations. If VCP conservatives are dominant, as the reelection of General Secretary Trong during the Twelfth National Congress suggests, Vietnam will likely prefer an option of deference that would avoid antagonizing China but still maintain the close bilateral party-to-party relationship that was established during the land border negotiations in the 1990s. In this particular scenario, Vietnam would likely employ a diplomatic initiative to smooth over any potential tensions. Following this approach, Vietnam's civilian and military operators would be instructed to comply with China's SCS ADIZ procedures. Vietnam would continue to use its bilateral party-to-party talks, which have been effective at ending long-standing territorial disputes and diffusing tensions.

Pure diplomacy, however, carries its own set of risks. As demonstrated during the 2014 HD-981 oil rig crisis, Vietnam's failure to prevent China's deployment of the rig into Vietnam's EEZ stoked domestic anti-Chinese nationalism and prompted widespread riots, damaging Sino-Vietnamese relations. Furthermore, compliance with Chinese ADIZ requirements might imply relinquishment of airspace control and by extension, its maritime claims in the South China Sea. The challenge for leadership, therefore, is delinking airspace control from maritime claims.

Conversely, if modernizers are dominant, Vietnam would be more inclined to multilateralize the issue and adopt a defiant posture similar to Japan's response during the 2013 ECS ADIZ crisis. Theoretically, after initially condemning China's actions, VCP leadership would issue orders to both its military and commercial aircraft to not comply with China's procedures. Vietnam could later seek legal recourse through the ICAO arbitration process to determine if China's SCS ADIZ threatens the order and safety of international aviation. Additionally, the Vietnamese military would likely increase surveillance flights in the area to undermine any new rules from China's SCS ADIZ. This policy path, however, risks provoking China and further straining Sino-Vietnamese relations. Furthermore, from a practical perspective, defiance is also risky. For example, Vietnamese civilian and military aircraft flying through China's SCS ADIZ could encounter additional radar queries or intercepts if they do not follow specified procedures, potentially endangering the lives of those onboard. Vietnam does not have

the power parity, either militarily or economically, that Japan or the United States can apply to directly challenge China. Consequently, direct defiance is perhaps a losing proposition and Vietnam is not likely to favor this option.

Another policy options involves Vietnam's expanding its own ADIZ, similar to South Korea's actions regarding the ECS ADIZ, as a signal to China that Vietnam is unwilling to acquiesce. In this scenario, Vietnam would be required to exercise its newly acquired self-help capabilities, especially its aerial assets, to both undermine a Chinese SCS ADIZ and to enforce its own expanded zone. Vietnam would need to increase aerial patrols and intercept PLA aircraft that overfly this new zone. This option might be considered if Vietnamese leaders felt that they could not adequately resolve the dispute through other means and that they might lose significant domestic legitimacy. Although this option is viable, it is not likely, as it could be interpreted as escalatory in nature.

Perhaps the most salient and least escalatory solution is partial civilian appeasement in conjunction with military noncompliance. Regardless of whether VCP conservatives or modernizers are dominant, Vietnamese civilian aircraft would be instructed to comply with Chinese ADIZ procedures in the interest of aviation safety while military/state aircraft would be ordered to rebuff the ADIZ rules. This policy conforms to the international legal regime for state aircraft, which are immune from coastal states' regulations when operating in extraterritorial airspace. Additionally, this approach mirrors state practices of the United States, South Korea, and Taiwan. Furthermore, it provides a way to decouple aviation safety from more contentious issues of sovereignty, allowing Vietnam to explain deference to its domestic audiences while still upholding its sovereignty claims in the SCS. This policy is the most likely to be embraced by Vietnam's leadership.

In conclusion, while a Chinese SCS ADIZ has the potential to exacerbate tensions between Vietnam and China, the two countries could still peacefully resolve their disputes and improve relations. Vietnam has a robust network of bilateral party-to-party relations it can rely on to preemptively offset tensions. China may negate potential negative criticism of territorial assertions if it is transparent in the manner it establishes a

SCS ADIZ by coordinating with Vietnam and other countries. All of this, however, is dependent on China's strategic objectives in the SCS.

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